United States Court of Appeals for the Second Circuit



APPENDIX

NO.75-4256

United States Court of Appeals

FOR THE SECOND CIRCUIT

NOS. 75-4256, 75-4242

NATIONAL LABOR RELATIONS BOARD,

Petitioner.

GENERAL IRON CORP.,

Respondent.

On Application for Enforcement of an Order of The National Labor Relations Board

APPENDIX

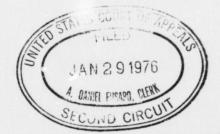
ELLIOTT MOORE,

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National Labor Relations Board,

Washington, D.C.

2057





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APPENDIX

BEFORE THE NATIONAL LABOR RELATIONS BOARD

GENERAL IRON CORP.

and

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, AFL-CIO

LOCAL 840, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (General Iron Corp.)

and

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, AFL-CIO

Stephen E. Appell, Esq., of Brooklyn, N.Y., for the General Counsel.

Vicki Erenstein, Esq., and

Elmer N. Beberfall, Esq.

(Sipser, Weinstock, Harper & Dorn), of New York City,
N.Y., for the Charging Union.

Edward F. Petit-Clair (Horowitz & Schwartz Associates), of

East Orange, N.J., for the Respondent Employer.

Brian O'Dwyer, Esq. (O'Dwyer & Bernstein), of New York City, N.Y., for the Respondent Union.

Case Nos. 29-CA-3956 29-CA-3969

Case No. 29-CB-1890

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the	Matter of:	GENERAL IRON CORP.
	Case Nos.:	29-CA-3956, 29-CA ₇ 3969 & 29-CB-1890
8. 5.74	Charge filed in case	no. 29-CA-3956
8.16.74	Charge filed in case	no. 29-CA-3969
8.16.74	Charge filed in case	no. 29-CB-1890
9.30.74	Order Consolidating Hearing, dated	Cases, Complaint and Notice of
10. 9.74	Answer of Responde	nt, dated
10.23.74), International Brotherhood of urs, Warehousemen and Helpers
10.23.74	Request for Postpon	ement, dated
10.29.74	Motion to Sever, re	ceived
10.30.74	Order Rescheduling	Hearing, dated
11. 7.74	Opposition to Motion	to Sever, dated
11.13.74	Erratum With Respondented	ect to Opposition to Motion to Sever,
11.13.74	Reply to General Co Sever, received	unsel's Opposition to Motion to
11.14.74	Denial of Motion for	Severance, dated
11.15.74	Request for postpon	ement, dated
11.18.74		Permission to Appeal Ruling of Addge in Accord With §102.26, received
11.19.74	Denial of postponem	ent, dated
11.20.74	Teletype, dated	
11.20.74	Telegram of Burton	Horowitz, received
11.20.74	Hearing opened	
11.22.74	Teletype of George	Leet, received
12. 4.74	Hearing closed	
1.31.75	Counsel for Local 8	40's Motion to strike, dated

2.24.75	Administrative Law Judge's Decision, dated
3.27.75	General Counsel's Exceptions, received
4. 9.75	Respondent's Exceptions, received
6.23.75	Board's Decision and Order dated

[Dated 2/24/74]

[JD-71-75 Brooklyn, N.Y.]

DECISION

Statement of the Case

HENRY L. JALETTE, Administrative Law Judge: This is a consolidated proceeding involving allegations that the above-named Respondent Employer violated Section 8(a)(1), (3) and (4) of the Act and that the above-named Respondent Union (hereinafter referred to as Local 840) violated Section 8(b)(1)(A) of the Act. The allegations against the Employer arose out of charges filed by Shopmen's Local Union No. 455, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO (hereinafter referred to as Local 455) in Case Nos. 29-CA-3956 and 29-CA-3969 on August 5, 1974 and August 16, 1974, respectively. The allegations against Local 840 arose out of a charge filed by Local 455 on August 16. On September 30, the cases were consolidated and complaint issued. On November 20 and 21, and December 2, 3 and 4, hearing was held in Brooklyn, New York.

Upon the entire record, including my observation of the witnesses, and after due consideration of the briefs filed by the Employer Local 840, and General Counsel, I make the following: 2/

Unless otherwise indicated all dates hereinafter are 1974.

Counsel for Local 840's Motion to strike portions of General Counsel's brief, or, in the alternative, to reopen the hearing, is denied for lack of merit.

Findings of Fact

I. The Business of the Employer

The complaint alleges that the Employer is a New York corporation with its principal office and place of business in Brooklyn, New York, where it is engaged in the manufacture, sale and distribution of metal bedgs, food trays and baskets and related metal products; that the Employer, in the year preceding issuance of the complaint, a representative period, purchased goods valued in excess of \$50,000 which were shipped to it directly from outside the State of New York; and, during the same period, that the Employer shipped directly outside the State of New York goods valued in excess of \$50,000. These allegations were admitted by the Employer and I find that it meets the Board's direct outflow and inflow standards for the assertion of jurisdiction and that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The foregoing establishes the jurisdictional basis for processing the complaint against the Employer; however, Local 840 denied the jurisdictional allegations of the complaint and there is some authority for the proposition that the Employer's admissions were not binding on it. N. L. R. B. v. Haddock-Engineers, Ltd., 215 F. 2d 734 (C. A. 9, 1954). However, I find that jurisdiction for purposes of proceeding against Local 840 was established by the testimony of Mario Accarino, secretary-treasurer of the Employer, that the Employer annually sells and ships directly outside the State of New York goods valued in excess of \$50,000. 3/

The testimonial assertions of Accarino constituted competent evidence of the Employer's volume of business. N. L. R. B. v. International Union of Operating Engineers Local 12, 243 F. 2d 134 (C. A. 9, 1957).

II. Factual Setting

At the times relevant herein, Respondent employed approximately 25 employees at its Brooklyn plant. In 1971, it had recognized Local 840 as exclusive representative of its employees in a production and maintenance unit and had entered into a 3-year collective-bargaining agreement with an expiration date of August 22, 1974.

In the spring of 1974, some of its employees became interested in representation by another union. The genesis of this interest was not established with any degree of precision, but it appears that Leroy Howard was the one to contact Local 455. In early May, he procured Local 455 authorization cards and proceeded to distribute them among the employees. He gave several cards to employee Jose Pieretti who distributed them to other employees.

On May 23, Local 455 sent a telegram to the Employer asserting that it represented a majority of the employees in a production and maintenance unit and requesting a meeting. The record does not indicate whether the Employer replied.

On May 28, the Employer laid off Luis Escalera and Carlos Gonzales; on May 29, Manuel Sanchez Agusto, Jose Carrion, and Enrique Pellot Reyes; on May 30, Charles Bailey. $\frac{4}{}$

The parties stipulated that Luis Escalera was laid off on May 27; Charles Bailey on May 28; Manuel Sanchez Agusto on May 29; and Jose Carrion, Carlos Gonzales, and Enrique Pellot Reyes, on or about May 23. For some unexplained reason, although the payroll records were available, there appeared to be some uncertainty about the precise date Carrion, Gonzales and Pellot were laid off. Because of this uncertainty, and on the basis of a companion stipulation about the number of hours each employee worked during the week of the layoffs, I have concluded the layoffs occurred as follows. Thus, Monday, May 27, was a paid holiday and the employees did not work. It was stipulated that Escalera and Gonzales worked only 8 hours that week. Accordingly, they must have been (Continued)

On June 3, Local 455 filed a petition in Case No. 29-RC-2669.

On June 5, the Employer discharged Marcellus Vilcius.

On July 8 and 15, hearing was held on Local 455's petition. At the July 15 hearing, employees Leroy Howard and Jose Pieretti appeared and testified on behalf of Local 455.

On July 29, Jose Pieretti was discharged.

In the last week of November, an election was held in Case No. 29-RC-2669. Local 840 had disclaimed interest in representing the Employer's employees and Local 455 was the only Union on the ballot. A majority of the votes cast were against representation by Local 455, but at the time of the hearing, the time for filing objections had not expired and it was represented that Local 455 would file objections to Employer conduct affecting the results of the election.

III. The Alleged Unfair Labor Practices

A. The Alleged Restraint and Coercion by Local 840

The complaint alleges that Local 840 threatened to inflict bodily injury and other harm upon employees of the Employer and threatened to cause their discharge with an object of inducing them to support Local 840 and to withdraw support of Local 455. The allegations are based on the testimony of employee Howard.

As noted earlier, Howard was the employee who contacted Local 455 about representing the employees at the Employer's plant.

^{4/ (}Continued) laid off on May 28. It was stipulated that Sanchez. Pellot and Carrion worked 16 hours. Accordingly, they must have been laid off on May 29. It was stipulated Bailey worked 24 hours. Accordingly, he must have been laid off on May 30.

At the time Howard became involved in this activity, he was shop steward for Local 840. He testified that on some date he could not recall he as approached at his work bench by Bill Nuchow, secretary-treasurer of Local 340. Nuchow remarked that he had heard Howard was trying to get another union into the shop. Howard admitted this was so and told Nuchow the employees were not satisfied with him and wanted him out of the shop. Nuchow said he wanted to do a good job and get a contract and he wanted the employees to give him a chance to represent them. Nuchow then held a meeting of the employees in the plant at which he asked them to give him a chance to get a contract. Apparently the employees agreed to do so, but thereafter Howard passed out cards for Local 455 and Nuchow heard of it because he telephoned Howard at the plant to tell him so and to ask him how come. Howard told him the employees had changed their minds, they didn't want Local 840.

The next day Nuchow came to the plant again and spoke to Howard at his work bench. Nuchow accused him of turning his back on him. He called a meeting of the employees again and reminded them of their promise to give him a chance and that he had heard that they had reneged on it. The record does not indicate whether any remarks were made by the employees. After the meeting, Nuchow was seen talking to some of the employees and later the employees were assembled again. This time, Nuchow had the employees indicate by a show of hands whether they wanted Local 840 or Local 455 to represent them. The results were 11 to 10 in favor of Local 455.

After the meeting, Nuchow spoke to Howard again and told him the things he was doing could get a lot of people fired. He told Howard he was no longer shop steward for Local 840 and to stop influencing employees in favor of Local 455. He said the things Howard had been doing could hurt the families of the employees, could get them in trouble.

Nuchow spoke to Howard on yet another occasion in the shop sometime thereafter. On this occasion, he told Howard "... unions had tried to come down, you know, and when they had picket signs or something set up -- I am not sure how he said it -- and they tried to come down on him like this and he had brought a hundred men to chase them away." He said "he bring down a hundred mens, what could I to about it, nothing I could do about it ..." He said the 100 men would come down with baseball bats. He also said a lot of people would get fired because of trying to get a new union. In one of his conversations, Nuchow said that before losing an election he would have his own men placed in the shop.

In the course of his conversations with Howard, Nuchow acknowledged that Local 455 was a good Union, but he asserted that it wasn't the type of Union for the Employer's type of operation. He said they'd put the shop out of business with their wage rates.

The foregoing is Howard's version of his conversations with Nuchow. Nuchow admitted having had several conversations with Howard and discussing Local 455. He did not indicate whether or not he had made any remarks to Howard about possible loss of jobs because employees were supporting Local 455 so that Howard's testimony on that subject is thus uncontradicted.

I conclude that Nuchow's remarks that Howard's activities on behalf of Local 455 could get a lot of people fired, could hurt the families of the employees and could get them in trouble constituted implied threats that Local 840 would cause the Employer to discharge supporters of Local 840. I recognize the fact that Nuchow did not state Local 840 would cause the discharges, rather, he purported to place responsibility on the Employer for any such action. It might be argued therefore that his remarks were but a

prediction of how the Employer would act in a matter beyond the control of Local 840. However, Local 840 had a contract with the Employer which contained a provision against discrimination for union activities, which, while probably intended to protect activities on behalf of Local 840, on its face protected employees from discharge because of activities on behalf of Local 455. Moreover, Article X of the contract prohibited discharge except for just cause. By his remarks, then, Nuchow was doing more than predicting what the Employer might do. He was implying that Local 840 would not invoke the contract to protect supporters of Local 455. His remark that before losing an election he would place his own men in the shop lent further meaning to the threat implied by his other remarks. For these reasons, I conclude that Nuchow's remarks were implied threats of discharge of supporters of Local 455.

On the subject of threats of bodily harm, Nuchow denied making any threats, specifically denying he made any mention of baseball bats. He testified to a conversation with Howard wherein he discussed Colavito, an agent of Local 455, wherein he adverted to an occasion when Nuchow had been associated with another Union when a strike had occurred and Local 455 had brought down some tough guys. According to Nuchow, he had responded by calling rank and file workers out of the shop to support him.

Upon analysis, there is a strong similarity between the incident described by Howard and that described by Nuchow, with two significant differences; in Nuchow's example the men did not have baseball bats and the action was defensive. I credit Howard who impressed me as a straightforward witness with no motive to lie; moreover, I do not believe he misunderstood Nuchow. His version of Nuchow's remarks supports a finding that Nuchow impliedly threatened Howard with bodily harm if employees persisted in

seeking to supplant Local 840 as the bargaining representative of the Employer's employees.

Despite the foregoing conclusions, I am persuaded a remedial order is not warranted. The only misconduct of which Local 840 was guilty were the implied threats to Howard. Apart from the fact that they were addressed to a single employee (who was also the Union steward), it is noteworthy that Local 840 was not alleged to have caused any discharges, and no acts of violence occurred, even though Local 455 filed a petition and an election was held. $\frac{5}{}$ As a matter of fact, far from engaging in violence to keep out Local 455, Local 840 disclaimed interest in representing the Employer's employees in the representation case, did not appear on the ballot, and is no longer in the Employer's plant. For all these reasons, I shall recommend dismissal of the complaint against Local 840. $\frac{6}{}$

B. The Alleged Interference, Restraint and Coercion by the Employer

1. The conduct of Henry Accarino

Paragraph 4 of the complaint alleges that on or about May 28, 1974, and on various unknown dates during the months of May, June and July, 1974, the Employer, by Henry Accarino, its president and agent, warned and directed its employees to refrain from becoming members of Local 455 and from giving assistance to it.

Paragraph 5 of the complaint alleges that on or about July 15, 1974, and on various unknown dates during the months of July

Local 840 has no record of prior violations for similar conduct.

American Federation of Musicians, Local 76, AFL-CIO (Jimmy Wakely Show), 202 NLRB 620; International Ladies Garment Workers Union, AFL-CIO (Twin-Kee Manufacturing Co., Inc.), 130 NLRB 614.

and August 1974, the Employer, by Henry Accarino, warned its employees that it would never bargain collectively, or sign a contract, with Local 455.

The only evidence adduced by General Counsel in support of these allegations was the testimony of employee Leroy Howard, and he was unable to fix the date of any of his conversations with Accarino with any greater degree of specificity than the months of May or June. Except as Howard's conversations with Accarino have bearing on the issue of company knowledge of the union activities of the alleged discriminatees as discussed hereinafter, the dates of the conversations are not particularly significant.

According to Howard, during the period of May or June and thereafter he had several conversations with Accarino about Local 455. On one occasion, Accarino came to his work bench and told him that he should leave Local 455 alone and get out of it, and that he should stop influencing other employees to vote for Local 455. Accarino said he did not want Local 455 in his shop. On more than one occasion, Accarino told Howard that Local 455 would not get a contract and that he would close the place down before he would give them a contract.

Accarino denied making the remarks attributed to him by Howard, but I do not credit him. As I indicated earlier, Howard impressed me as a very straightforward and honest witness with no motive to lie. He is currently employed by the Employer and since the events here in question has received a promotion to a position which may be supervisory. 7/ On the other hand, Henry Accarino

Whether or not Howard's promotion was to a position of supervisor within the meaning of the Act is not relevant to the issues in this proceeding, because the promotion came after the events in question herein. Record facts were not developed to permit a determination of his status after promotion.

was a witness whose testimony is not deserving of credence. I base this judgment on the testimony which he gave with regard to the layoff and termination of employees more fully discussed hereinafter. Given the untrustworthy nature of his testimony on such subjects, I can see no reason to give credence to his denial of the remarks attributed to him by Howard.

Section 7 guarantees to employees the right to be represented by labor organizations of their own choosing. An employer who tells his employees to quit supporting a union in which they have become interested and to quit influencing other people in support of such union and to get out of such union interferes with the Section 7 rights of his employees even though his remarks may not contain express threats of reprisals if the employees fail to heed his request. Employees will naturally and reasonably infer that unless they heed their employer's instructions he will take reprisals against them. In the instant case, Accarino did not make any express threat to take action against Howard individually, but he did make the express threat to shut the plant down and impressed upon Howard the futility of selecting Local 455 to represent him and other employees by saying he would never sign a contract with it. Such remarks are clearly coercive and violative of Section 8(a)(1) of the Act.

The record indicates that, in the course of his conversations with Howard, Accarino did make mention that he couldn't afford to pay what Local 455 is asking for and that Local 455 would rob him. It is settled law that an employer may make a prediction as to the effects he believes unionization will have on his company, however, such prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control. $\frac{8}{}$ There is no indication that

^{8/} N. L. R. B. v. Gissel Packing Company, Inc., 395 U.S. 575, 618.

Accarino's remarks were based on any objective facts. His remarks may have been based on a sincere belief that selection of Local 455 to represent his employees would result in the closing of the plant, but such belief, no matter how sincere, does not render his statement one of fact nor remove the coercive effects of his remarks. For the foregoing reasons, I find that in telling Howard to leave Local 455 alone and to stop influencing other employees in its favor and in threatening to close the plant down and not to sign a contract with Local 455 if the employees selected it as their bargaining representative the Employer interfered with, restrained and coerced employees in the exercise of rights guaranteed by Section 7 of the Act and violated Section 8(a)(1) of the Act.

Paragraph 5 of the complaint alleges that on or about May 28, 1974, July 15, 1974, and on various unknown dates during the months of May, June, July and August, 1974, the Employer, by Henry Accarino, threatened its employees with discharge, threatened its employees with other reprisals if they became or remained members of Local 455 or if they gave any assistance to it.

The only evidence adduced by General Counsel in support of these allegations was the testimony of Jose Pieretti who testified that on May 28 or 29, Accarino approached him and asked him if everyone in the place wanted a new union to represent them.

Pieretti told him yes. Accarino remarked he didn't want any problems with unions, that they gave him a lot of problems, and he said he could fire everyone. In the course of his remarks, Accarino stated that the Union they had would have to stay there.

Accarino denied ever threatening any employee, but he was not asked specifically about the remarks attributed to him by Pieretti. In any event, I find Pieretti to be a credible witness and I find that Accarino's remarks to Pieretti that he could fire everyone

was coercive and violative of Section 8(a)(1) of the Act. Admittedly, Accarino did not say he would fire anyone, but his remark was made in the course of the interrogation of an employee about union activities in the plant, and was accompanied by a condemnation of unions generally. Understandably, this expression of a power to fire everyone would lead employees to believe that he would exercise the power if they acted contrary to his wishes, and Accarino indicated that his wish was that Local 840 remain. In the circumstances, the remarks contained an implied threat of discharge. $\frac{9}{}$

In addition to the foregoing, Pieretti testified about a conversation with Accarino in his office on or about May 30 wherein Accarino complained about his work performance and invited Pieretti to request to be laid off, explaining that he couldn't lay Pieretti off unless Pieretti asked because he would then have a problem with the Union. According to General Counsel, Accarino's invitation to Pieretti to request a layoff constitited an implied threat of discharge, motivated by a desire to get rid of a supporter of Local 455, and therefore violative of Section 8(a)(1) of the Act.

For reasons which will appear below in a discussion of the discharge of Pieretti, I conclude that the incident described by Pieretti was deliberately contrived by the Employer to coerce Pieretti because of his activities on behalf of Local 455 and that Accarino's remarks contained an implied threat of discharge violative of Section 8(a)(1) of the Act.

In his brief, General Counsel refers to the interrogation of Pieretti described above and appears to be contending the interrogation was unlawful. However, the complaint contains no allegation of unlawful interrogation and I am not persuaded an issue of interrogation was fully litigated to justify a finding of a violation.

2. The conduct of Mario Accarino

The complaint alleges that on or about June 12, Mario Accarino, secretary-treasurer of the Employer, gave the impression of keeping under surveillance the meeting places, meetings and activities of Local 455 and the concerted activities of its employees and threatened to discharge employees if they requested time off to give testimony under the Act.

The only testimony adduced by General Counsel in support of these allegations was that of Jose Pieretti that on a work day in June he asked Henry Accarino for permission to be off work. He received permission and went to the Board's Regional Office where he gave a statement to a Board agent. The next day, Mario Accarino, who Pieretti had also advised about his being off, told Pieretti "the next time you are going to ask me for a day off I going to fire [you] because I know where you was . . . "

Mario Accarino denied having such a conversation and making any threats. I do not credit him; rather, I credit Pieretti. In not crediting Mario Accarino, I am influenced in part by what I consider to be a palpably untrue defense to the allegations of unlawful discharge, and in part by the sometimes vague and very general nature of his testimony.

On the basis of Pieretti's testimony, I find that the Employer violated Section 8(a)(1) of the Act. Employees do not have a statutory right to be excused from work in order to provide statements to the Board concerning matters under investigation. However, where an employer has no business justification for denying a request for time off, his denial of the request because it is for the purpose of assisting the Board in an investigation interferes with the Section 7 rights of employees.

It may be argued that General Counsel has not sustained his burden of proof because Mario said nothing about Pieretti's going to the Board, nor state that he would refuse to give Pieretti time off for such purpose if requested to do so. However, based on the sequence of events described by Pieretti, and Accarino's remark that he knew where Pieretti was, the inference is compelling that Mario's threat related to Pieretti's requesting time off the day before to go to the Board, and the threat to discharge Pieretti for such a reason was violation of Section 8(a)(1) of the Act.

As to Mario Accarino's remark to Pieretti that "I know where you was," I find the remark violative of Section 8(a)(1) of the Act. Pieretti had not told the Accarinos why he wanted time off and by his remark Mario Accarino conveyed the impression to Pieretti that his activities in support of Local 455 were being kept under surveillance. Such conduct tends to restrain and coerce employees from exercising their Section 7 rights and is violative of Section 8(a)(1) of the Act.

C. The Alleged Discriminatory Discharges

1. The Spielberg defense

As noted earlier, in the last week of May, the Employer laid off six employees, discharged Marcellus Vilcius on June 5 and Jose Pieretti on July 29. The contract between Local 840 and the Employer which was then in effect contained grievance and arbitration provisions, and on September 5 and 27 a hearing was held before an arbitrator regarding all the discharges except for that of Jose Carrion. The arbitration process was initiated by the Union. There is no showing that any of the employees involved filed grievances. On October 26, the arbitrator issued an award in which he concluded that except in the case of Vilcius, the employees were either discharged for cause or in conformity with the contract. In the case of Vilcius, the arbitrator made no finding but issued an award of

reinstatement without backpay because the Employer offered him reinstatement at the hearing and Vilcius accepted. The Employer asserts that the Board should defer to such award and dismiss the complaint allegations relating to the individuals whose cases were disposed of therein.

In Spielberg Manufacturing Company, 112 NLRB 1080, the Board held that where an issue presented in an unfair labor practice proceeding had previously been decided in an arbitration proceeding, it would defer to the arbitration award if the proceeding appeared to have been fair and regular, all part as had agreed to be bound, and the decision of the arbitration panel was not clearly repugnant to the purposes and policies of the Act. In this case, the proceeding cannot be deemed to have been fair and regular, and it would be repugnant to the purposes of the Act to defer to the award.

There are several reasons why I reach this conclusion. As noted above, the arbitration process was initiated by Local 840. When hearing was first convened, none of the alleged discriminatees appeared and hearing was rescheduled from September 5 to September 27. During the interval, Local 840 assertedly notified all the alleged discriminatees, but except for Pieretti and Vilcius, the record does not support a finding that they in fact received notice. According to Nuchow, he instructed his secretary to send out notices. He did not know whether any of the alleged discriminatees received notice and it is clear four did not (Gonzales, Pellot, Escalera and Bailey) because the letters were returned undelivered. Pieretti knew of the hearing, but he refused to attend. Only Vilcius appeared at the hearing. The only "evidence" presented at the hearing consisted of the Employer's assertion of its reasons for the terminations. Nuchow had no evidence to present to rebut such assertions. Even in the case of Vilcius who was present, no evidence was presented. Presumably, the need to do so was obviated by the Employer's offer of

reinstatement, but there was no consideration of his loss of wages. Apart from that, Vilcius cannot speak English, and there was no interpreter at the arbitration hearing. As a matter of fact, Nuchow was so ill-acquainted with Vilcius and the facts of his discharge that in notifying Vilcius of the arbitration hearing he offered to procure a Spanish interpreter.

On the basis of the foregoing, it is evident that deferral to the arbitration award would be repugnant to the policies of the Act. The only basis for holding otherwise would be that the employees were negligent in not pursuing their contractual rights and must bear the onus for the failure of their representative to represent them properly before the arbitrator. 10/ Such a holding would be unjustified in this case and would run counter to the policy of the Board not to defer to arbitration where the facts and circumstances establish an apparent antagonism between the interests of the alleged discriminatees on the one hand and both parties to the contract on the other. Kansas Meat Packers, 198 NLRB No. 2; Sabine Towing & Transportation Co., Inc., 205 NLRB No. 45. That such an antagonism existed here is too evident to require exposition. Accordingly, I conclude that the Board should not honor the arbitrator's award.

2. Company knowledge

I have already described how the activity on behalf of Local 455 began with employee Leroy Howard procuring cards which he and Jose Pieretti distributed to other employees. Pieretti's initial distribution of cards was on May 10. $\frac{11}{}$ The cards were distributed in the plant, signed and returned to Pieretti in the plant. Several

^{10/} See Electronic Reproduction Service, 213 NLRB No. 110.
11/ Pieretti testified it was May 11, but he was obviously mistaken.

employees signed cards on May 10, including Luis Escalera, Carlos Gonzales, Manuel Sanchez Agusto, Jose Carrion 12/ and Enrique Pellot Reyes, who were laid off during the week of May 27. Charles Bailey who was laid off on May 30 also signed a card, but the date he did so is unknown. The card was stolen from his locker at the plant during the Memorial Day weekend. The precise date of execution is unimportant; it was before Bailey's layoff. Marcellus Vilcius, who was terminated on June 5, signed a card on May 10 as did Pieretti who was discharged on June 25.

The eight named employees are alleged to have been discharged because of their activities on behalf of Local 455. The Employer denies any knowledge that any of them were supporters of, or had signed cards for, Local 455.

It is, of course, true that before an employer may be found to have discriminated against employees because of union activities there must be a showing that he had knowledge that his employees were engaged in union activities. However, in appropriate circumstances, a finding of discrimination may be found even in the absence of proof of company knowledge of the union activities of the particular employees who were laid off or discharged. Such circumstances are proof of knowledge of general union activity, the timing of the layoffs or discharges, the animus of the employer against the Union, and the pretextuous nature of the reason assigned for the layoffs or discharges. In such circumstances, the inference may be drawn that the employer's action was "... intended to discourage respondent's employees from adhering to the union at a period critical to its future at respondent's plant and also to affect the union's majority." N. L. R. B. v. Piezo Manufacturing Corp., 290 F. 2d 455, 456 (C. A. 2, 1961).

^{12/} Carrion's card was undated, but Pieretti fixed its execution as of the same time as the others.

Such an inference is warranted here. First, there is no question that the Employer was aware that its employees were engaged in activities on behalf of Local 455 before the layoffs, because Local 455 had requested recognition by telegram on May 23. Second, the threats to Pieretti by Henry Accarino evidence its animus against Local 455. Third, the layoffs occurred almost immediately after the demand for recognition. Fourth, the reason assigned for he layoffs, as discussed below, was clearly false. Accordingly, even without proof of knowledge that the laid off employees had signed cards for Local 455 or were supporters of Local 455, the conclusion is warranted that the layoffs were motivated by a desire to discourage employees from giving support or adhering to Local 455.

In fact, there is substantial circumstantial evidence to warrant an inference that the Employer knew that the laid off employees had signed cards for Local 455 or were supporters of Local 455. There is the fact that the distribution and signing of cards occurred inside a plant of about 25 employees. There is the fact that the activity in the plant was not limited to the distribution and signing of cards. $\frac{13}{}$ Thus, on at least two occasions Nuchow, representative of Local 840, was in the plant talking to employees, and on one occasion he assembled the employees and conducted a poll to determine whether they wanted to be represented by Local 840 or Local 455. Both Howard and Pieretti testified about this poll, and while

There is evidence that some of the employees met with a representative of Local 455 on a street corner near the plant. However, I do not rely on such meetings to draw an inference of company knowledge because the record does not indicate that any of the laid off employees were present or that such meetings occurred before the layoffs.

Howard was uncertain about the date the poll was taken, Pieretti testified without contradiction that the incident occurred on May 28. Apart from the fact that it is hard to believe that Nuchow would not discuss what was happening with the Accarinos, there is the circumstance that Henry Accarino is personally involved in production and on the plant floor most of the time 'basically watch-[ing].'' According to Howard, at the time of the vote he saw Mario Accarino in the shipping department talking to two employees. It is inconceivable that both Henry and Mario Accarino would not be aware of what was happening.

These circumstances, considered with the circumstances already described above of the timing of the layoffs and the pretextuous nature of asserted reason for the layoffs, support a finding that the Employer either knew of the sympathies of the laid off employees for Local 455, or suspected them of supporting Local 455.

The circumstances which pertain to company knowledge in the case of the laid off employees generally pertain in the case of Vilcius. Like them, he signed a card on May 10. In addition, he met with the representative of Local 455 and other employees on a nearby street corner before his discharge. The timing of his discharge is different, yet it did follow by 2 days the filing of the RC petition by Local 455. Moreover, the reason assigned for his discharge is so patently false that one can only conclude that the assigned reason is a pretext to hide an unlawful motive. An inference of company knowledge is consequently fully warranted.

In the case of Pieretti, the circumstantial evidence is corroborated by the direct evidence of company knowledge established by his interrogation by Henry Accarino and the impression of surveillance conveyed by Mario Accarino.

For all the foregoing, I conclude that the record as a whole supports a finding of company knowledge in the cases of all the discriminatees.

3. The discriminatory layoffs

As indicated earlier, six employees were laid off in the week of May 27. The Employer asserts that they were laid off because of lack of work. According to Mario Accarino, at some unspecified time in 1974 prior to June, the Employer developed a new line which necessitated an increase in the work force in March, April or early May. However, by letter dated May 20, the Employer was advised by its sales representative to hold up all shipments of the new line until further notice. As a result, the Accarinos decided to lay off the employees in question. Henry Accarino corroborated Mario Accarino's very general testimony.

I reject the Employer's defense and do not credit Mario Accarino and Henry Accarino for several reasons. As noted, the letter from the sales representative was dated May 20. This was a Monday. If the letter precipitated the decision to layoff employees, the Employer presumably had part of that work week to reach a decision. Significantly, no layoffs were made until May 28, after the demand for recognition and after the polling of employees in the plant by Nuchow on May 28. Actually, the Employer had even more notice of a need to hold up shipments than is indicated by the May 20 letter, because Mario Accarino had allegedly discussed the matter with the sales representative before receiving the letter. Yet, there were no layoffs until May 28. Coupled with this are the facts that neither Mario nor Henry Accarino could indicate when the decision was made to lay off employees, why the six employees were not all laid off on the same date, and how they arrived at the number six.

There may be some explanation for the foregoing circumstances, but there is none for what followed the layoffs. As noted earlier, the layoffs were made on May 28, 29 and 30. On May 30, the Employer mailed letters to three of the laid off employees (Escalera,

Gonzalez, and Sanchez) notifying them to return to work on June 3; on June 4, the three remaining laid off employees were notified to return to work on June 6. Thus, immediately after the layoffs, the Employer recalled the employees to work, and if the employees had responded to the notices (assuming, arguendo, they received them timely) they would have been out of work for about 2 days.

Such a sudden turn of events suggests either that there was no necessity for the layoffs in the first place, or that there was an unexpected development immediately after the layoffs which dictated a need to recall the employees. There is no evidence of this latter possibility. Henry Accarino's only explanation for recalling the employees to work was "Things happen in business, like I might have been waiting for steel at the time, there might have been a steel strike. Steel might have come in and I had steel for the people to work with. That's not peculiar." That may not have been peculiar, but is is clearly irrelevant because the Employer has not asserted that the layoffs were attributable to a shortage of steel.

The foregoing demonstrates conclusively that there was no economic necessity for the layoffs of the week of May 27, and it seems to me to be a work of supererogation to point out that the letter of May 20 on which the Employer relies was not a notice of cancellation of orders, but only of a short delay in shipments. This is significant because the record indicates a substantial rate of attrition in the Employer's work force; consequently, there was no need to reduce the work force because of a temporary stop on the shipment of goods produced.

General Counsel asserts as an additional indicium of discriminatory motive the fact that all the laid off employees had signed cards for Local 455. I am not persuaded that that fact is entitled to any weight. I do find, however, that the fact that Frank Jesus, who had not signed a card and had less seniority than the laid off employees

(except Bailey), was not selected for layoff is further proof of the Employer's discriminatory motive.

In sum, in view of the fact that the asserted reason for the layoffs is demonstrably false, the Employer's animus against Local 455, including the unlawful threats, and the timing of the layoffs, the conclusion is warranted, and I find, that the layoffs were motivated by the activities of employees on behalf of Local 455 and were for the purpose of chilling any such activities. In reaching this conclusion, I have considered the fact that other employees signed cards for Local 455 and were not discharged. In my judgment, this fact is entitled to little weight when measured against the factors described above. "... the mere fact that all union members or supporters are not discharged does not disprove the fact that any employee's discharge is based upon an unlawful discriminatory motive." N. L. R. B. v. Challenge Cook Bros., 374 F. 2d 147, 152 (C.A. 6). Based on the foregoing analysis, I find that Respondent violated Section 8(a)(1) and (3) of the Act by the layoffs described above.

4. The discharge of Marcellus Vilcius

Marcellus Vilcius is a Haitian who speaks little or no English (he speaks French) and with a very limited ability to understand English. He was employed by the Employer on September 22, 1973, pursuant to a referral by an employment agency. None of the Employer's officers or supervisors can speak French, but Henry Accarino hired him and assigned him to operate a spot welding machine. The work is so little skilled that through demonstration Vilcius was able to perform his work satisfactorily. He testified credibly that he received no complaints or reprimands over his work performance. 14/ He was hired at \$1.85 per hour, received

Henry Accarino implied that Vilcius' work performance was less than satisfactory, but he did not expressly testify that (Continued)

a 12 cents per hour increase after 1 month, and sometime thereafter received another increase to \$2.10 per hour.

On June 5, Vilcius was terminated. According to Henry Accarino, Vilcius' inability to speak and understand English caused him to make mistakes and this was the reason for his discharge. At the time of the discharge, Vilcius' job was to shape the ends of U shaped handles. After each one was done, he would throw it into a 20 gallon barrel. On the day of his discharge, he had completed five barrels of handles and Henry Accarino, by hand signs and gestures, instructed Vilcius to bring the barrels to the shipping department, and he showed him exactly where he was to place the barrels. Alongside the place where Vilcius was instructed to deposit the barrels, there were boxes containing other finished handles which had been counted. When Vilcius brought the barrels to the spot to which he had been directed by Accarino, he did not merely place the barrels where he had been instructed to, he emptied them into the nearby boxes, thus ruining the count in those boxes. Accarino discovered this later on and testified 10,000 handles had to be recounted. Accarino estimated he fired Vilcius because of his action and because it made him fear Vilcius would make a mistake one day that would probably hurt someone.

Vilcius' testimony about this particular incident was not as detailed as Accarino's, perhaps because of the language barrier. In any event, he denied doing anything wrong. According to him, he placed the handles where he was told to by some unidentified

^{14/ (}Continued) Vilcius was ever criticized about his work performance. As a matter of fact, he admitted on cross-examination that Vilcius may have made minor mistakes that he overlooked because "that happens all day long. I mean everybody is not perfect."

individuals in the shipping department. In my judgment, his testimony of Henry Accarino, however, any difference between his and Accarino's versions of what happened is not dispositive of the case.

Section 8(a)(3) of the Act makes it unlawful to discharge or otherwise discriminate against an employee because of his union activities. Under that Section of the Act, an employer has the right to discharge an employee for any reason, good or bad, or no reason. The critical question is what motivated the Employer in deciding to discharge the employee. While the existence of a valid ground for discharge is a factor in an analysis of the Employer's motive, it is not sufficient as a defense if the record establishes that it was a pretext to discharge for union activities. 15/

I have already described Vilcius' union activities and stated my reasons for inferring company knowledge of such activities, and the record supports a finding that the mistake of Vilcius on June 5 was seized upon by the Employer as a pretext to discharge him because of his support of Local 455. The dispositive consideration in the case of Vilcius is the fact that the assigned reason for discharge relates to a deficiency in Vilcius which Respondent had not only tolerated prior to employee activity on behalf of Local 455, but even more to a deficiency which existed and was known to exist at the time Vilcius was hired. In light of this circumstance, one is warranted in rejecting the assertion that Vilcius was discharged because of the language problem unless it appears that the language problem had grown more severe or had caused significant problems in his performance of his duties. The record does not support such a finding. The record shows one mistake born not so much out of a

N. L. R. B. v. Advanced Business Forms Corp., 474 F. 2d 457 (C. A. 2) and cases cited therein.

lack of understanding but, in Henry Accarino's words, because Vilcius " . . . done me a favor." Accarino amended that testimony to explain he was joking, yet that testimony reflects his recognition of the fact that in commingling the work product Vilcius was trying to help. Henry Accarino described himself as an employer with great forbearance for employee mistakes, but he showed no such forbearance in the case of Vilcius, an employee of 9 months who had received 2 raises and against whom no specific examples of unsatisfactory work performance could be cited. Rather, he discharged him abruptly. Given the minor nature of the mistake (that is, the loss of part of a day's work), Vilcius' past satisfactory performance, the Employer's knowledge of the language problem from the time it hired Vilcius, and evaluating these factors with the Employer's demonstrated animus against Local 455 and its unlawful layoff of employees in the week of May 27. I am persuaded that the motivating factor in his discharge was Vilcius' support of Local 455, and I find that his discharge was violative of Section 8(a)(1) and (3) of the Act.

5. The discharge of Jose Pieretti

Jose Pieretti began working for the Employer in 1971. He worked on a variety of jobs, but was principally a spot welder. According to Pieretti, until May 28 or 29, he had no complaints about his work. On May 28 or 29, Henry Accarino assigned him to work on a spot welding machine on which Pieretti had never worked before. Pieretti testified he did not know how to do the particular work involved on this machine and Accarino did not explain to him how to do it. One-half hour after assigning him to the machine, Accarino returned and criticized Pieretti for not doing the job properly. Pieretti explained that Accarino had to show him how and Accarino told him he knew how. Pieretti protested that he didn't, but Accarino

still didn't show him how. Instead, he walked away, but stayed nearby and when Pieretti turned to a fellow employee working nearby for help Accarino returned and told him not to ask anyone for help. Pieretti performed the job thereafter until noon the following day when Accarino reassigned him to his old job stating that Pieretti was not doing the new job properly.

That day or the next, Henry Accarino called Pieretti to the office and asked him what was wrong with him. Pieretti said there was nothing wrong. Accarino asked him if he liked his job and whether he liked to work there. Pieretti said he was working, wasn't he, so he must like working there. Then, Accarino asked him if he wanted to be laid off. He explained that he couldn't lay Pieretti off, unless Pieretti asked, because he would then have a problem with the Union. Pieretti said he did not want to be laid off. The record does not indicate how the conversation ended.

On July 22, Pieretti asked Henry Accarino for 2 days off to attend a religious convention. Accarino said okay and Pieretti was absent from work on Thursday and Friday, July 25 and 26. On Monday, July 29, he reported to work and Henry Accarino discharged him for the stated reason that Pieretti had been absent from work 2 days when he had asked permission to be absent only 1 day. Pieretti protested he had asked for 2 days as had been his practice in prior years.

Accarino gave Pieretti his check and he left. Outside the plant, he ran into Nuchow and told him of his discharge. Nuchow suggested they return to the office to discuss it with Accarino. In the office, Nuchow asked Accarino why he had discharged Pieretti and Accarino told him it was because Pieretti made too many mistakes. Pieretti protested this was not the reason Accarino had given him. Accarino adhered to his decision.

As indicated earlier, the question to be decided in a discharge case is not whether there existed cause for discharge, but rather, what was the employer's motive in discharging the employee. I have set forth earlier Pieretti's activities on behalf of Local 455 and my reasons for finding company knowledge of such activities. The only question remaining is whether the Employer was motivated by such activities in deciding to discharge him.

According to Henry Accarino, Pieretti was discharge because he made too many mistakes and he took time off without notifying him.

On the subject of mistakes, Accarino focused on a job assigned to Pieretti about 6 weeks before he was discharged. Accarino testified that the job involved the operation of a spot welding machine to make several welds to form a slack hanger. After a day or two, an operator would make 60 to 70 hangers per hour. Pieretti made 10 or 12 the first day, 5 or 6 were bad. Accarino spoke to Pieretti about his production and defective work and Pieretti blamed the machine. Accarino offered to let Pieretti choose another machine, but he refused. Pieretti worked 3 days on the fabrication of the hanger, did not improve and was assigned another job. According to Accarino, this next job formed part of a larger assembly and Pieretti did his part so poorly that the employee who had to complete the assembly complained about Pieretti's work.

Because of this poor work, Accarino called Pieretti to his office to find out what was wrong. He testified Pieretti told him he was afraid of the machine. Accarino could not understand why and explained that there was no danger. He asked Pieretti whether he was looking to be laid off and Pieretti said no.

The foregoing description of events by Accarino is in many respects similar to Pieretti's. Thus, it is clear that the assignment

to weld a slack hanger described by Accarino is the assignment described by Pieretti, and it is clear from both Pieretti's and Accarino's testimony that Pieretti's work performance on this assignment was less than satisfactory. According to Pieretti, however, any mistakes he made were attributable to Accarino's refusal to instruct him on how to do the work assigned. Significantly, Accarino did not contradict Pieretti's testimony on this score, including his refusal to permit Pieretti to be instructed by other employees. Presumably, this was because Pieretti was an experienced spot welder, even more so than the other employees engaged in making the slack hanger. However, the problem was not in operating the spot welder as much as familiarity with the jog used to hold the parts in place. Apart from that, it is difficult to understand the logic of refusing to instruct an employee in a new operation when he indicates he needs instruction.

In my judgment, the explanation for Accarino's behavior towards Pieretti is evident from the chronology of events. Thus, the assignment was made the day after he had interrogated Pieretti and threatened him with discharge. $\frac{16}{}$ Accarino testified that the assignment was necessary because Pieretti's old job ran out, but, as was true of other testimony he gave, his assertion was unsupported by any details. As a matter of fact, he equivocated about that fact by explaining, "Because his job was finished, terminated, probably was no more to do " $\frac{17}{}$

Next, there is the discussion in Accarino's office. There is not too much difference in the versions of the two witnesses except

Accarino could not fix the date of the assignment, but Pieretti did and I credit him.

Compare this "probably" with Accarino's explanation described earlier for recalling laid off employees that "steel might have come in."

that Pieretti testified that Accarino referred to the presence of the Union as a bar to his laying off Pieretti unless he asked to be laid off. Presumably this was a reference to Local 840 and the fact that the contract provided for layoffs in accordance with seniority. However, the contract did not preclude discharge for cause so that there was no need for Accarino to invite Pieretti to quit. If his work was unsatisfactory, all Accarino had to do was discharge him for cause. Not only did he not do so, he did not even warn him that he would be discharged if he did not improve his work performance. Under the circumstances, it is difficult to understand the purpose of the discussion except as General Counsel contends, to harass Pieretti to cause him to quit or to create a pretext for his unlawful discharge. Given the chronology of events and the nature of the discussion, I so find.

Further proof that the Employer used Accarino's mistakes as a pretext to discharge him for his activities on behalf of Local 455 is the fact that he was one of the most senior employees. He testified that before May 28 (that is, before the assignment referred to by Accarino) there were no complaints about his work. There is no evidence to the contrary. Moreover, after the mistakes complained of by Accarino, Pieretti is not shown to have been guilty of poor work performance. According to Accarino, Pieretti was making mistakes even up to the last week he worked. I do not credit him. Accarino gave no details of such mistakes, no supervisors were called to corroborate him (although Foreman Perez was in the hearing room for part of the hearing), and there is no evidence that he spoke to Pieretti about his work performance after the conversation in his office. It is noteworthy that poor work performance was not the reason first given Pieretti for his discharge. Rather. Accarino first told him he was being discharged for being absent from work on July 25 and 26.

According to Accarino, this was the straw that broke the camel's back -- a familiar phrase in labor cases. According to Accarino, Pieretti was absent 2 days without notifying him. Pieretti stated he did notify Henry Accarino and that Accarino said okay. I credit Pieretti. In this connection, I note that his testimony about his termination conversation was undenied by Henry Accarino, and according to that testimony, Accarino's accusation was that Pieretti took 2 days off when he had asked for only one. This was an acknowledgment by Henry Accarino that Pieretti had notified him of his proposed absence even if only for 1 day. Moreover, when Pieretti returned to Accarino's office with Nuchow, Accarino shifted his reason for discharge to Pieretti's mistakes, thereby implicitly acknowledging that Pieretti had not been absent without permission.

But even if Pieretti had been absent without permission, I would find that Accarino used such absences as a pretext to discharge him for his union activity, in view of the facts that Pieretti was a senior employee with no past record of absenteeism, that his discharge was effected without warning or opportunity to explain the reason for his absence, and Henry Accarino's admission that other employees who had been absent often had not been fired.

For all the foregoing reasons, I find that Pieretti was discharged because of his activities on behalf of Local 455 and that the Employer thereby violated Section 8(a)(1) and (3) of the Act.

The complaint alleges that the discharge of Pieretti was violative not only of Section 8(a)(1) and (3), but also of Section 8(a)(4). The predicate for this allegation is that Pieretti testified on behalf of Local 455 at a hearing on the petition in Case No. 29-RC-2669. In light of the foregoing findings that the Employer seized on mistakes of Pieretti and his absence from work on July 25 and 26 as pretexts to discharge him for his activities on behalf of Local 455, and in light of the timing of the discharge with reference to

the July 15 hearing and Pieretti's appearance as a witness, it would appear to be a routine conclusion that in discharging Pieretti the Employer was also motivated in part by the fact that Pieretti appeared at the hearing as a witness for Local 455. The difficulty with reaching such a conclusion is that there is no evidence the Employer knew that Pieretti appeared at the hearing as a witness on July 15. The hearing was ex parte. Pieretti testified that July 15 was not a work day (he didn't explain why) and consequently he did not have to ask permission to be off from work. In view of these circumstances, I do not know on what facts I am to find that the Employer had knowledge of his appearance at the hearing as a witness.

As described earlier, when Pieretti obtained permission to be absent from work to give a statement to a Board agent in June, he was thereafter threatened with discharge by Mario Accarino under circumstances which indicated that Accarino had learned of Pieretti's activities during his time off. Arguably, Mario or Henry Accarino also learned of Pieretti's second visit to the Board's Regional Office. However, on the first visit Pieretti took a day off from work. On the day he appeared for the R case hearing, he was not scheduled to work. Under the circumstances, it would be pure speculation to hold that the Employer learned of his appearance. 18/

Another speculation is that Pieretti only came to the Board's Regional Office on one occasion, namely, July 15, and that it was for this reason he was threatened by Mario. This speculation is suggested by the fact there is no showing Pieretti gave a statement to a Board agent in June and there is no indication Local 455 had any pending unfair labor practice charges at that time, and there is no reason that July 15 would not have been a work day. Pieretti's testimony precludes pursuit of this speculation, although I question that the record shows the true facts on this point.

In the absence of evidence of company knowledge, or of facts from which to infer knowledge, I am constrained to conclude that General Counsel has failed to establish by a preponderance of evidence that the discharge of Pieretti was violative of Section 8(a)(4) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Employer set forth in Section III, above, occurring in connection with its operations described in Section I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The Remedy

Having found that the Employer violated Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that the Employer laid off Luis Escalera, Carlos Gonzales, Manuel Sanchez Agusto, Jose Carrion, Enrique Pellot Reyes, and Charles Bailey, and discharged Marcellus Vilcius and Jose Pieretti, because of their activities on behalf of Local 455, I shall recommend that it be ordered to offer all of them, except Carrion and Vilcius, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and to make them whole for any loss of earnings they may have suffered by reason of their unlawful termination by payment to them of a sum of money equal to that which they normally would have earned as wages, from the date of their discharge to the

date of the offer of reinstatement, less net earnings, to which shall be added interest at the rate of 6 percent per annum in accordance with the formula set forth in <u>F. W. Woolworth Company</u>, 90 NLRB 289 and Isis Plumbing & Heating Co., 138 NLRB 716.

In the case of Carrion, the record indicates that he returned to work on August 13 and was fired on September 20. There is no contention his discharge on that occasion was unlawful. Accordingly, I shall recommend that he be made whole for any loss of earnings in the manner described above for the period from the date he was laid off to August 13.

In the case of Marcellus Vilcius, I find that he received a valid offer of reinstatement at the arbitration hearing on September 27. This finding is supported by the finding of the arbitrator and the testimony of William Nuchow and Henry Accarino at the hearing before me. In my judgment, despite the fact that the arbitration proceeding did not conform to the Spielberg criteria, there is no reason to impugn the finding of the arbitrator that Vilcius was offered reinstatement at the arbitration hearing, nor is there any basis for rejecting the very explicit testimony of Nuchow on this point. His testimony, corroborated by Henry Accarino, indicates that at the arbitration hearing a telephone call was placed to Henry Accarino at the plant to suggest to him that Vilcius be offered reinstatement. Accarino agreed and Nuchow so advised Vilcius and instructed him to report to work at the plant on Monday and that he would meet him at the plant. Vilcius never appeared. The testimony of Vilcius on this point is not entirely clear. He confirmed the fact that a call was placed to Accarino, but he testified that Henry said no to the suggestion that Vilcius be reinstated. However, he added to his answer, "and when I arrived in my house I thought about it and I didn't go back." This part of his answer is in my judgment indicative of the fact that he was given an offer of reinstatement but upon

reflection when he arrived home he decided not to accept the offer. In reaching this conclusion, I have considered his reply to a question by the General Counsel as to whether he had ever been offered his job back, that "After a while I got a letter and I went and a girl gave me \$3 to get a cab and go to work. And then I went and I was supposed to go back, I was supposed to go to work and then Henry said he did not need me." On first reading this. I thought perhaps Vilcius had accepted the offer, but when he went to the plant he was denied reinstatement. But such a construction of his testimony would have been inconsistent with the state nent recited above that "I thought about it and I didn't go back." I am not sure I understand what Vilcius intended when he testified "Henry said he did not need me," but I am persuaded from all the evidence that he received a valid offer of reinstatement. Despite the fact the offer was tendered in English, I am persuaded that Vilcius understood the offer when it was made, but he later decided not to accept it. Accordingly, I shall not recommend that the Employer offer him reinstatement, but only that he be made whole for any loss of earnings he may have suffered from the date of his discharge to September 27, the date of the offer of reinstatement, such loss of earnings to be computed in the manner set forth above.

In recommending that the unlawfully laid off employees be offered reinstatement, I have considered the evidence that Respondent mailed notices to the employees to return to work. In my judgment, such notices did not constitute bona fide offers of reinstatement to warrant the withholding of the Board's usual remedy, including the tolling of the backpay due the laid off employees. My conclusion is predicated upon the facts that knowing the laid off employees were Spanish-speaking individuals (except perhaps for Charles Bailey), the Employer sent notices to them in English; that the Employer

took the unusual precaution of obtaining proof of mailing of
the notices rather than the more customary mailing by registered mail with return receipt requested which would have shown
whether the notices were actually delivered; and that the notices
provided the employees with insufficient notice of the date to
return to work. In my judgment, in view of the foregoing circumstances, plus the fact that the notices to return to work were
mailed almost immediately after the employees had been laid off
for a clearly pretextuous reason, the conclusion is warranted that
the notices to return to work were part of a contrived plan by the
Employer to avoid the possibility of any backpay liability.

I am not finding that the Employer would not have reinstated the employees had they reported for work (the reinstatement of Carrion argues against such a finding); I am persuaded, rather, that in using the method he did the Employer gambled the employees would not appear. His gamble was successful. True, Carrion returned to work, but he did so on August 13, long after the notice to return, and this suggests he was rehired not as a result of the notice, but because he reapplied for employment. The record is silent on this point as none of the laid off employees testified, except Manual Sanchez Agusto. He testified he never received the notice. The record suggests that neither did Gonzales, Escalera, Pellot and Bailey, because, as noted earlier, when they were sent letters by Local 840 of the impending arbitration hearing the letters were returned to Local 840 undelivered.

Conclusions of Law

- 1. General Iron Corp., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2. Shopmen's Local Union No. 455, International Association of Bridge Structural and Ornamental Iron Workers, AFL-CIO, and

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Local 840, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and each of them, are labor organizations within the meaning of Section 2(5) of the Act.

- 3. By directing employees not to support Shopmen's Local Union No. 455, threatening employees with discharge because they have engaged in activities on behalf of Shopmen's Local Union No. 455, threatening to shut the plant down and to refuse to sign a collective-bargaining agreement with Shopmen's Local No. 455, if employees select it as their bargaining representative, and by creating the impression that it was surveying the activities of its employees on behalf of Shopmen's Local No. 455, threatening employees with discharge if they request time off to give testimony under the Act, the Employer has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and 2(6) and (7) of the Act.
- 4. By laying off Luis Escalera, Carlos Gonzales, Manuel Sanchez Agusto, Enrique Pellot Reyes, Jose Carrion and Charles Bailey, and by discharging Marcellus Vilcius and Jose Pieretti, because of their union activities, Respondent had engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) and 2(6) and (7) of the Act.
- 5. General Counsel has failed to establish by a preponderance of the evidence that the discharge of Jose Pieretti was violative of Section 8(a)(4) of the Act.
- 6. The conduct of Local 840, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, described herein does not warrant the issuance of a remedial order.

Upon the foregoing findings of fact, conclusions of law, and the entire record and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: $\frac{19}{}$

In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor (Cont'd)

ORDER

Respondent, General Iron Corp., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

- (a) Threatening employees with discharge because of their activities in behalf of Shopmen's Local Union No. 455, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO.
- (b) Directing employees not to support Shopmen's Local Union No. 455.
- (c) Threatening to shut the plant down and to refuse to sign a collective-bargaining agreement with Shopmen's Local Union No. 455, if the employees select it as their bargaining representative.
- (d) Threatening employees with discharge if they request time off to give testimony under the Act.
- (e) Creating the impression of surveillance of the activities of employees on behalf of Shopmen's Local Union No. 455.
- (f) Discouraging membership in, or activities on behalf of, Shopmen's Local Union No. 455, or any other labor organization of its employees, by laying off or discharging employees because of their activities on behalf thereof, or otherwise discriminating in regard to the hire or tenure of employment or any terms or conditions of employment of its employees.
- Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

41 (g) In any other manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act, or refrain from any or all such activities. 2. Take the following affirmative action designed to effectuate the policies of the Act: (a) Offer Luis Escalera, Manuel Sanchez Agusto, Carlos Gonzales, Enrique Pellot Reyes, Charles Bailey, and Jose Pieretti immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them by payment to them of a sum of money equal to the amount they normally would have earned as wages from the date of their discharge to the date of their reinstatement in the manner set forth in the Section entitled "The Remedy." (b) Make Jose Carrion whole for any loss of earnings he may have suffered by reason of the discrimination against him in the manner set forth in the Section entitled "The Remedy" for the period from May 30, 1974 to August 13, 1974. (c) Make Marcellus Vilcius whole for any loss of earnings he may have suffered by reason of the discrimination against him in the manner set forth in the Section entitled "The Remedy" for the period from June 5, 1974 to September 27, 1974. (d) Preserve and, upon request, make available to the Board and its agents for examination and copying, all payroll

records, social security payment records, timecards, personnel records and reports and all other records relevant and necessary to a determination of the amounts of backpay due under the terms of this recommended Order.

- (e) Post at its Brooklyn plant copies of the attached notice marked "Appendix." 20/ Copies of such notice, on forms provided by the Regional Director for Region 29, after being duly signed by the Respondent's representative, shall be posted by it immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.
- (f) Notify the said Regional Director, in writing, within 20 days from the date of this Decision, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the allegations of the complaint found not to have been sustained by a preponderance of the evidence be dismissed.

Dated at Washington, D.C. February 24, 1974.

/s/ Henry L. Jalett Administrative Law Judge

In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

After a trial in which both sides had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the law and has ordered us to post this notice.

WE WILL NOT direct employees not to give assistance or support to Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO.

WE WILL NOT threaten to shut down the plant if the employees select Shopmen's Local No. 455 to represent them.

WE WILL NOT tell employees that we will not sign a contract with Shopmen's Local No. 455 if they select it to represent them.

WE WILL NOT threaten employees with discharge for giving assistance or support to Shopmen's Local No. 455.

WE WILL NOT threaten employees with discharge if they request time off for the purpose of giving statements to the National Labor Relations Board.

WE WILL NOT create the impression that we are surveying the activities of employees on behalf of Shopmen's Local No. 455.

WE WILL NOT discharge employees because they join, assist, or give support to Shopmen's Local No. 455 or any other labor organization.

Since the Board found that we violated the law when we laid off Luis Escalara, Carlos Gonzales, Manual Sanchez Agusto, Enrique Pellot Reyes, Charles Bailey and Jose Carrion, and that we violated the law when we discharged Jose Pieretti and Marcellus

Vilcius, we will offer to reinstate them, if we have not already reinstated them, and we will pay them for any loss of pay they may have suffered because we laid them off or fired them.

You are free to become and remain members of Shopmen's Local No. 455, or any other labor organization.

	GENERAL IRON CORP. (Employer)	
Dated	By (Representative) (T	itle)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street - 4th Floor, Brooklyn, New York 11241 (Tel. No. 212 - 596-3535).

[Dated 6/23/75]

[D-9902 Brooklyn, N.Y.]

DECISION AND ORDER

On February 24, 1975, Administrative Law Judge Henry L. Jalette issued the attached Decision in this proceeding. Thereafter, the General Counsel and Respondent Company filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, $\frac{1}{}$ and conclusions $\frac{2}{}$ of the Administrative Law Judge, as modified herein.

The Respondent Company has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

We hereby correct the following inadvertent error which in no way affected the Administrative Law Judge's conclusions nor our adoption thereof: In the first sentence of the eighth paragraph of sec. III, A, of the Decision, the last word should be "455" rather than "840."

In finding knowledge on the part of Respondent Company concerning the union activities of the alleged discriminatees, Member Kennedy relies solely on the substantial circumstantial evidence to the effect that the Employer knew that the laid-off employees had signed cards for Local 455 or were supporters of Local 455.

The Administrative Law Judge found that Respondent Union violated Section 8(b)(1)(A) of the Act by its secretarytreasurer's remarks to Lerov Howard, the employee who contacted Local 455 about representing Respondent Company's employees and who was also the shop steward for Respondent Union, that Howard's activities on behalf of Local 455 could get a lot of people fired, could hurt the families of the employees. and could get them in trouble. He also found that Respondent Union violated Section 8(b)(1)(A) by telling Howard that Respondent Union would inflict bodily injury on Respondent Company's employees by bringing down 100 men with baseball bats if the employees persisted in seeking to supplant Respondent Union as the bargaining representative of Respondent Company's employees. However, the Administrative Law Judge found that a remedial order was not warranted as the only misconduct of which Respondent Union was guilty was the implied threats to a single employee. Howard; Respondent Union was not alleged to have caused any discharges; no acts of violence occurred; and Respondent Union disclaimed interest in representing the Respondent Company's employees in the representation proceeding, did not appear on the ballot, and is no longer in the Company's plant. We disagree.

In our view these statements were sufficiently flagrant and coercive to necessitate a remedy. We find this to be particularly so as in this case there is an interrelationship between these unlawful acts and those of Respondent Company, since both Respondents were seeking to block Local 455 and keep Respondent Union in the shop as the collective-bargaining representative of Respondent Company's employees. Moreover, although the coercive statements were uttered only to a single employee, they were likely to be disseminated to the small unit of 25 employees since they were made to the individual

who was Respondent Union's shop steward and a chief Local 455 activist. $\frac{3}{}$ Accordingly, we shall order appropriate remedial relief.

The Administrative Law Judge concluded that the notices to return to work mailed to the unlawfully laid-off employees were not bona fide because: the mailed notices were written in English whereas Respondent Company knew that the laid-off employees, except for possibly one individual, were Spanishspeaking; Respondent Company "took the unusual precaution of obtaining proof of mailing of the notices rather than the more customary mailing by registered mail with return receipt requested"; and the notices provided the employees with insufficient notice of the date to return to work. The third reason is clearly not supported by the record, as all the notices designated a specific return date. Thus, we are left with only two alleged defects, the offer in the English language and the proof of mailing. For the reasons set forth below, we disagree with the Administrative Law Judge that offers of reinstatement have to be made in Spanish and served by registered mail.

We are not aware of any case which has held that the language of the land is an inappropriate means for communicating with employees. Some individuals who cannot readily speak English often can read that language. An offer to return to work does not require any great knowledge of the English language to be understood. Then an illiterate person receives a communication which he does not understand, he customarily shows it to a member of the family, often a child who is attending public school, a friend, or neighbor

In these respects, Members Kennedy and Penello find this case distinguishable from American Federation of Musicians, Local 76, AFL-CIO (Jimmy Wakely Show), 202 NLRB 620 (1973), to which they still adhere.

who can read and explain the letter. People do not just ignore or throw away letters written in English, especially where, as here, they come from an employer who has just laid them off.

Moreover, the Administrative Law Judge finds that it is not certain that at least one of the laid-off employees, Charles Bailey, was Spanish-speaking. Nevertheless, he has lumped Bailey with the Spanish-speaking individuals in finding the notice to him defective.

As to the proof of service, no doubt it is desirable for a person who must serve another to send the required notice by registered mail, return receipt requested. The return receipt is then unmistakable evidence of service. If the sender uses ordinary mail, he runs the risk of not being able definitively to prove service, and at least one affected indiviual herein, Sanchez, testified that he had never received the reinstatement offer. However, this is essentially a matter of proof best determined in the compliance stage.

Furthermore, the novel idea that offers of reinstatement must be served by registered mail, return receipt requested, is not supported by precedent. In fact, the Board recently held that the service of General Counsel's brief by ordinary mail was sufficient even though the opposing party asserted without contradiction that it had never received the brief. All that was required by the Board in that case was a certificate of service saying that the General Counsel's brief was sent "first class United States mail, postage prepaid." Ordinary mail was held to be sufficient under the law of the State of Washington and under the Board's Rules and Regulations. In the instant case, however, the Administrative Law Judge finds anything less than registered mail, return receipt requested, to be

^{4/} Pacific Grinding Wheel Co., Inc., 216 NLRB No. 91 (1975).

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inadequate, despite the fact that there is no <u>per se</u> rule that the validity of an employer's offer of reinstatement to an employee depends on the employee personally receiving a letter offer. $\frac{5}{}$

Accordingly, we find that there is insufficient evidence in the record upon which to base a conclusion as to the validity of Respondent Company's offers. Therefore, instead of finding the reinstatement offers not to be bona fide, we would leave any question of service of the notices to be determined at "e compliance stage of the proceeding.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

- A. Respondent Company, General Iron Corp., Brooklyn, New York, its officers, agents, successors, and assigns, shall:
 - 1. Cease and desist from:
- (a) Threatening employees with discharge because of their activities in behalf of Shopmen's Local Union No. 455, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO.
- (b) Directing employees not to support Shopmen's Local Union No. 455.
- (c) Threatening to shut the plant down and to refuse to sign a collective-bargaining agreement with Shopmen's Local Union No. 455, if the employees select it as their bargaining representative.
- (d) Threatening employees with discharge if they request time off to give testimony under the Act.
- (e) Creating the impression of surveillance of the activities of employees on behalf of Shopmen's Local Union No. 455.

^{5/} Adams Book Company, Inc., 203 NLRB 761, fn. 39 at 769 (1973); Rental Uniform Service, 167 NLRB 190, 197--198 (employee Bridges) (1967).

- (f) Discouraging membership in, or activities on behalf of, Shopmen's Local Union No. 455, or any other labor organization of its employees, by laying off or discharging employees because of their activities on behalf thereof, or otherwise discriminating in regard to the hire or tenure of employment or any terms or conditions of employment of its employees.
- (g) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act, or to refrain from any or all such activities.
- 2. Take the following affirmative action designed to effectuate the policies of the Act:
- (a) Offer Luis Escalera, Manuel Sanchez Agusto, Carlos Gonzales, Enrique Pellot Reyes, Charles Bailey, and Jose Pieretti immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them by payment to them of a sum of money equal to the amount they normally would have earned as wages from the date of their discharge to the date of their reinstatement in the manner set forth in the section of the Administrative Law Judge's Decision entitled "The Remedy."
- (b) Make Jose Carrion whole for any loss of earnings he may have suffered by reason of the discrimination against him in the manner set forth in the section entitled "The Remedy" for the period from May 30, 1974, to August 13, 1974.

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- (c) Make Marcellus Vilcius whole for any loss of earnings he may have suffered by reason of the discrimination against him in the manner set forth in the section entitled "The Remedy" for the period from June 5, 1974, to September 27, 1974.
- (d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (e) Post at its Brooklyn plant copies of the attached notice marked "Appendix A." $\frac{6}{}$ Copies of said notice, on forms provided by the Regional Director for Region 29. after being duly signed by Respondent Company's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Company to insure that said notices are not altered, defaced, or covered by any other material.
- (f) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondent Company has taken to comply herewith.
- B. Respondent Union, Local 840, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, New York, New York, its officers, agents, and representatives, shall:

In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading, "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

- 1. Cease and desist from:
- (a) Threatening employees with discharge because of their activities in behalf of Shopmen's Local Union No. 455, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO.
- (b) Threatening employees with bodily harm because of their activities on behalf of Shopmen's Local Union No. 455, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO.
- 2. Take the following affirmative action designed to effectuate the policies of the Act:
- (a) Post at its office and all meeting halls, and at the General Iron Corp. plant, if General Iron Corp. is willing, copies of the attached notice marked "Appendix B." 7/ Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent Union's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent union to insure that said notices are not altered, defaced, or covered by any other material.
- (b) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps Respondent Union has taken to comply herewith.

In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Dated, Washington, D.C. June 23, 1975.

/s/ Howard Jenkins, Jr. Member /s/ Ralph E. Kennedy Member /s/ John A. Penello Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

After a trial in which both sides had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the law and has ordered us to post this notice.

WE WILL NOT direct employees not to give assistance or support to Shopmen's Local Union No. 455, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO.

WE WILL NOT threaten to shut down the plant if the employees select Shopmen's Local Union No. 455 to represent them.

WE WILL NOT tell employees that we will not sign a contract with Shopmen's Local Union No. 455 if they select it to represent them.

WE WILL NOT threaten employees with discharge for giving assistance or support to Shopmen's Local Union No. 455.

WE WILL NOT threaten employees with discharge if they request time off for the purpose of giving statements to the National Labor Relations Board.

WE WILL NOT create the impression that we are surveying the activities of employees on behalf of Shopmen's Local Union No. 455.

WE WILL NOT discharge or lay off employees because they join, assist, or give support to Shopmen's Local Union No. 455, or any other labor organization.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of the

rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer Luis Escalera, Manuel Sanchez Agusto, Carlos Gonzalez, Enrique Pellot Reyes, Charles Bailey, and Jose Pieretti immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, and WE WILL make them whole for any loss of pay they have suffered, with interest at 6 percent per annum.

WE WILL make Jose Carrion whole for any loss of earnings he may have suffered for the period from May 30, 1974, to August 13, 1974, with interest at 6 percent per annum.

WE WILL make Marcellus Vilcius whole for any loss of earnings he may have suffered for the period from June 5, 1974, to September 27, 1974, with interest at 6 percent per annum.

You are free to become and remain members of Shopmen's Local Union No. 455, or any other labor organization.

		GENERAL IRON CO	ORP.
		(Employer)	
Dated	Ву		
		(Representative)	(Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212--596-3535.

APPENDIX B NOTICE TO MEMBERS

Posted by Order of the National Labor Relations Board An Agency of the United States Government

WE WILL NOT threaten employees with discharge for giving assistance or support to Shopmen's Local Union No. 455.

WE WILL NOT threaten employees with bodily harm for giving assistance or support to Shopmen's Local Union No. 455.

LOCAL 840, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (Labor Organization)

Dated	Ву			
		(Representative)	(Title)	

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212 -- 596-3535.



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AUTHORIZATION FOR REPRESENTATION Shopmen's Local Union No. 455 of the 1977/19 International Ass'n of Bridge, Structural and Ornamental Iron Workers 1. the undersigned, employee of the 1977/19 (Name of Company) (Chy) (State) employed as (Out This) Badge or Clock No. Telephone No. residing at (Street Address) (Chy) (Zone) (State) thereby authorize and designate Shopmen's Local Union No. 455 of the International Association of Bridge, Structural and Ornamental Iron Workers (affiliated with the A. F. of L.) to act as my sole and exclusive agent and representative for all purposes of collective bargaining, whether under the operation of the National Labor Relations Act or otherwise. Date Signature 2008 (Employee) (This card is not an application for Union membership)	AUTHORIZATION FOR REPRESENTATION Shopmen's Local Union No. 455 of the International Ass'n of Bridge, Structural and Ornamental Iron Workers I, the undersigned, employee of the College And The Workers Billy 11224 No. (State) employed as (Job Title) Badge or Clock No. (Street Address) (Street Address) Telephone No. Telephone No. Tesiding at 21 (Street Address) (Street Address) (City) Telephone No. 455 of the International Association of Bridge, Structural and Ornamental Iron Weakers (affiliated with the A. F. of L.) to act as my sole and exclusive agent and representative for all purposes of collective bargaining, whether under the operation of the National Labor Relations Act of otherwise. Date 6 / 10 / 44 Signature CPP (Employee) (Employee)	(3C 2)

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GENERAL COUNSEL'S EXHIBIT NO. 2.

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GENERAL COUNSEL'S EXHIBIT NO. 6, 7, 8

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AUTHORIZATION FOR REPRESENTATION Shopmen's Local Union No. 455 of the International Ass'n of Bridge, Structural and Ornamental Iron Workers i, the undersigned, employee of the Carlot (Name of Company) (City) (
AUTHORIZATION FOR REPRESENTATION Signature AUTHORIZATION FOR REPRESENTATION Shopmen's Local Union No. 455 of the International Ass'n of Bridge, Structural and Ornamental Iron Workers 1. the undersigned, employee of the (Name of Company) (City) (State) employed as (Job Titte)	
AUTHORIZATION FOR REPRESENTATION Shopmen's Local Union No. 455 of the International Ass'n of Bridge, Structural and Ornamental Iron Workers i, the undersigned, employee of the Carlot (Name of Company) (City) (
AUTHORIZATION FOR REPRESENTATION Signature AUTHORIZATION FOR REPRESENTATION Shopmen's Local Union No. 455 of the International Ass'n of Bridge, Structural and Ornamental Iron Workers i, the undersigned, employee of the Representation (Name of Company) (City) (City) (State) Badge or Clock No. Telephone No. Telephone No. Telephone No.	
Authorization for Representation Authorization for Representation Signature Authorization for Representation Signature Authorization for Representation Shopmen's Local Union No. 455 of the International Ass'n of Bridge, Structural and Ornamental Iron Workers I, the undersigned, employee of the (Name of Company) (City) (City) (State) Badge or Clock No. Telephone No.	

hereby authorize and designate Shopmen's Local Union No. 455 of the International Association of Bridge, Structural and Ornamental Iron Workers (affiliated with the A. F. of L.) to act as my sole and exclusive agent and representative for all purposes of collective bargaining, whether under the operation of the National Labor Relations Act on otherwise.

Date 5/10/34 Signature Manual Labor Relations (Emp.oyee)

(This cord is not an application for Union as

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GENERAL COUNSEL'S EXHIBIT NO. 6, 7, 8 Continued

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GENERAL COUNSEL'S EXHIBIT NO. 9 [EXCERPTS]

In or around early May 1974, Pieretti began to openly show his support for Local 455 and his opposition for Local 840.

The Union that I refer to in Case No. 29-CA-3949 that it is alleged that Pieretti was supporting is Local 455, Iron Workers. It is general knowledge in the shop that Jose' Pieretti is the key supporter of Local 455. * * *

I have read the above 3 page statement and swear that it is true.

/s/ William Nuchow

Subscribed and sworn to before me this 7th day of August 1974.

/s/ Richard D. Epifanio Board Agent

GENERAL COUNSEL'S EXHIBIT 10



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BJA247(1818)(1-0391058143-014)PD 05/23/74 1746 ICS IPMBJNA NYK SUSPECTED DUPLICATE 1-038369A143 BJC 238 ICS IPMDCNC NIK 03115 FR DC NEWYORK NY 97 05-23 451P EDI CENERAL IRON CORP, DLR, REPORT DELIVERY 2715 WEST 15 ST BKLYN BT: " E

YOU ARE ADVISED THAT THE UNDERSIGNED LOCAL REPRESENTS: THE OVERWHELMING MAJORITY OF YOUR EMPLOYEES IN A UNIT CONSISTING OF PRODUCTION AND MAINTENANCE EMPLOYEES. ACCORDINGLY, WE HEREBY REQUEST A MEETING FOR THE PURPOSE OF DISCUSSING TERMS AND CONDITIONS OF EMPLOYMENT. IF YOU MANT AVY-QUESTION AS TO OUR MAJORITY STATUS WE ARE WILLING



TO DEMONSTRATE THE SAME TO ANY IMPARTIAL PERSON OF AGENCY AGREED TO BY MANAGEMENT AND THE UNION. WE SUGGEST THAT YOU CONTACT US IMMEDIATELY TO SET UP A MEETING BY CALLING GR 5-2226 - UNION HEADQUARTERS WILLIAM COLAVITO PRESIDENT SHOPMEN'S LOCA UNION NO. 455 853 BROADWAY NEW YORK NY 10003

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401013/74 1141

GENERAL COUNSEL'S EXHIBIT NO. 11 [EXCERPT]

8/21 (Quit) Frank Jesus helper 5/13/74 2.12 1/2

RESPONDENT'S EXHIBIT NO. 3

[EXCERPTS]

AGREEMENT

Between

GENERAL IRON CORP. 2715 West 15th Street Brooklyn, New York

and

LOCAL 840, I.B.T. 216 West 14th Street New York, New York

Dated:

August 23, 1971 to August 22, 1974

ARTICLE VIII PROBATIONARY EMPLOYEES

New employees shall be on a probationary basis for the first thirty (30) days of employment. During the probationary period, they shall have no seniority rights, and may be discharged by the Company, in it's sole discretion, with or without just cause, without recourse to arbitration. If the employee is retained beyond the thirty (30) days, his name shall be added to the seniority list and his seniority shall date back to the date of commencement of employment.

For the purpose of this Article, a day of probation shall be defined as eight (8) hours of work.

ARTICLE XII GRIEVANCES & ARBITRATION

Any dispute or grievance between the Company and it's employees or the Union, growing out of the interpretation or application of any clause of this Agreement, or any breach or threatened breach of this Agreement, shall be settled in the following manner:

STEP ONE:

The Steward, within two (2) working days after the grievance shall have arisen, may discuss this matter with the Company, who shall attempt to adjust the matter within forty-eight (48) hours after its presentation.

STEP TWO:

If the matter shall not have been adjusted at Step One, within the period specified, it may, within three (3) working days thereafter, be reviewed by representatives of the Union and the Company. At this time the grievance must be submitted by the grieving party in writing.

STEP THREE:

If the matter shall not have been settled within the period specified in Step One and Step Two, it may, within fifteen (15) days after the expiration of the period be submitted to binding arbitration by either party.

ARBITRATION:

Arbitrator shall be designated for this purpose by agreement between the parties, or if such agreement cannot be reached, the Arbitrator shall be designated by the American Arbitration Association.

The arbitration shall proceed in accordance with the rules of the American Arbitration Association then pertaining. The cost of arbitration shall be borne equally by the Union and the Company. The failure of either party to submit an arbitrable dispute to arbitration within the time limited by this paragraph shall be conclusively deemed to be a waiver of its right thereto, and of the claim upon which it is based. No individual employee may initiate an arbitration proceeding, it being agreed and understood that the Company and the Union are the only parties at interest herein.

Nothing herein contained shall be construed as depriving the parties hereto of the right to initiate and process a grievance directly with each other, and thereafter to utilize the arbitration procedures of this article.

There shall be no right to arbitration to obtain, and no arbitrator shall have the authority to make an award granting any change, modification, alteration of, addition to, or subtration of, the provisions contained in this Agreement.

ARTICLE XVII MANAGEMENT RIGHTS

The Company shall have the exclusive right to determine the size of the working force and all lay-offs and reductions in staff shall be in the Company's exclusive discretion except as limited by the provisions of this contract. The Company shall have the exclusive right, depending upon the season or work load, to transfer men within the shop, subcontract, or move to another location.

RESPONDENT'S EXHIBIT NO. 5

Martin S. Garment Company

Bath/boudoir/boutique

May 20, 1974

Mr. Mario Accarino General Iron Corp. 2715 West 15th Street Brooklyn, New York 11224

Dear Mario:

Summing up our recent meeting, I would like to be sure that all the corrections we made on the drawings are implemented promptly.

Also, hold up all shipments until further notice. I would suggest planning shipment for approximately mid-June as many department stores will have to reallocate the dollars.

I hope this doesn't upset your production schedule too much.

Regards.

Sincerely,

/s/ Martin

Martin S. Garment
MARTIN S. GARMENT CORP.

MSG/enr

Room 907/230 Fifth Avenue/New York City, New York 10001

RESPONDENT'S EXHIBIT NO. 11

AMERICAN ARBITRATION ASSOCIATION

Voluntary Labor Arbitration Tribunal

In the Matter of the Arbitration between GENERAL IRON CORPORATION

and

LOCAL 840, I.B. T.

Case Number: 1330-0685-74

AWARD OF ARBITRATOR

The undersigned arbitrator, having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and dated August 23, 1971 and having been duly sworn and having duly heard the rpoofs and allegations of the Parties, AWARDS as follows:

- 1) Employees Luis Escalera, Carlos Gonzalez, Manuel Sanchez Agosto, Charles Bailey, Enrique Pellot, and Jose Pieretti were either discharged for just cause or were properly released in conformance with Article VIII and Article X of the contract.
- 2) The Company at the September 27, 1974 hearing reinstated Marcellus Vilceus to his former position effective September 30, 1974, without back pay.

/s/ J ceph F. Wildebush 10/26/74 Arbitrator's signature (dated)

State of New Jersey)
County of Passaic)

On this 26th day of October, 1974, before me personally came and appeared Joseph F. Wildebush to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

/s/ Dorothy H. Doland

Notary Public of New Jersey My Commission Expires 10/16/78

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration Between

GENERAL IRON CORPORATION

AND

OPINION

LOCAL 840, I.B.T.

Case Number: 1330-0685-74

The issue presented to the Arbitrator was as follows:

"Whether the following employees were discharged for just cause or were properly released under the contract:

Luis Escalera

Carlos Gonzalez

Manuel Sanchez Agosto

Charles Bailey

Enrique Pellot

Marcellus Vilceus

Jose Pieretti

Hearings were held on September 5, 1974 and September 27, 1974 at the New York City offices of the American Arbitration Association.

Appearances were as follows:

For the Employer:

Burton R. Horowitz, Esq.

For the Union:

William Nuchow, Secretary-Treasurer

FACTS

Article VIII, Article X and Article XVII of the Collective Bargaining Agreement reads in pertinent part as follows:

"Article VIII. New employees shall be on a probationary basis for the first thirty (30) days of employment. During the probationary period, they shall have no seniority rights, and may be discharged by the Company, in it's sole discretion, with or without just cause, without recourse to arbitration. If the employee is retained beyond thirty (30) days, his name shall be added to the seniority list and his seniority shall date back to the date of commencement of employment.

"Article X. DISCHARGE. The Company agrees that it will not discharge any non-probationary employee except for just cause, to mean among other things, but without limitation to, inefficiency, insubordination, sabotage, drunkenness, excessive lateness or absence, punching time cards of other employees or infraction of Company rules. Notice shall be given to the Union of any discharge giving a reason therefor. This clause is not a modification of waiver of any rights by the parties hereto of the grievance and arbitration provisions of this Agreement.

"Article XVII. MANAGEMENT RIGHTS. The Company shall have the exclusive right to determine the size of the working force and all layoffs and reductions in staff shall be in the Company's exclusive discretion except as limited by the provisions of this contract"

The Union had a collective bargaining agreement effective from August 23, 1971 to August 22, 1974. The discharges and layoffs which are the gravamen of the instant arbitration, and the grievances thereto occurred prior to the termination date of the contract and are therefore appropriately in arbitration.

Employees Jose Carrion, Luis Escalera, Carlos Gonzalez, Manuel Sanchez Agosto, and Charles Bailey were laid off prior to the end of their probationary period for lack of work. They were recalled by registered letter soon thereafter but only Carrion responded. Carrion is still employed by the Company.

Jose Pieretti was hired by the Employer on November 15, 1971. He was a marginal employee, according to the Employer, and received several warnings concerning his lack of efficiency. He was discharged on July 25, 1974 after he ruined several pieces of material that he was working on. When asked about this, he informed his supervisor that he would not work on the machine because he was afraid of being injured.

Marcellus Vilceus was hired on October 24, 1973. He was discharged on June 5, 1974 for inefficiency. At the September 27, 1974 hearing, he admitted that he did not follow proper procedures because he did not understand the instructions. He also stated that he was going to school to learn English. He also stated, in response to a question posed by counsel for the Employer, that he did not know of the existence of a second union.

It was disclosed at the arbitration that there were proceedings at the National Labor Relations Board which involved the Union and the grievants. In spite of this, the Union notified the grievants by letter dated September 10, 1974 that an arbitration hearing was scheduled for September 27, 1974. Copies of these letters were furnished to the Arbitrator and are incorporated by reference in this proceeding. Evidence on behalf of the grievants herein was presented by William Nuchow, Secretary-Treasurer of the Union, and was considered by the Arbitrator. Only Marcellus Vilceus appeared at the hearing.

Some of the grievants were probationary employees. The others had completed their probationary periods and just cause had to be shown for their discharges.

OPINION

At the hearing, the Employer, upon learning that Marcellus Vilceus is making an effort to learn English, offered him immediate reinstatement which he accepted. Accordingly, his discharge is reduced to suspension without pay.

The Union contended that the layoffs or discharges of the other employees were due to Union activity. Based on the evidence, this contention must be rejected. The layoffs were for lack of work. In addition grievants Escalera, Gonzalez, Sanchez Agosto, Pellot, and Bailey, who were laid off for lack of work during their probationary period, were notified by letter to return to work. Copies of these letters are made part of this record. These employees failed to return to work.

With regard to Jose Pieretti, the Employer contended that it had no knowledge of his Union activities, if any existed. His work record indicated that he was inefficient, ruining fifty percent of the pieces he worked on and producing only ten percent as much as inexperienced personnel just hired. In addition, it was indicated that he felt uncomfortable in using spot welding machines which are used on a day by day basis in the performance of his duties. Therefore, his discharge for just cause is sustained. There was no evidence that his discharge was based on Union allegation. A bare assertion without proof is unacceptable to sustain such a charge.

/s/ Joseph F. Wildebush Arbitrator

Dated: October 26, 1974

RESPONDENT'S EXHIBIT NO. 12

International Brotherhood of Teamsters
Local 840
345 West 44th Street
New York, N.Y. 10036

September 10, 1974

Mr. Marcellus Vileus 1717 Carroll Street Brooklyn, N.Y.

Dear Brother:

An arbitration will be held on your behalf on Friday, September 27, 1974 at 2:00 p.m., at the offices of the American Arbitration Association, 140 West 51st Street, New York City, 9th Floor, before Mr. Joseph Wildebush, Arbitrator.

Please contact this office prior to the above date so that we may properly prepare on your behalf.

Should you not appear, or contact me prior to September 27th, I shall still proceed on your behalf and fight for your reinstatement, plus back pay, at General Iron Company.

If you feel there is a need for a Spanish translator, we will supply one.

Fraternally yours,

/s/ William H. Nuchow Secretary-Treasurer

WHN:jk

[EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS] BEFORE THE NATIONAL LABOR RELATIONS BOARD 29th REGION

In the Matter of:

1

GENERAL IRON CORP.

and

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, A. F. L. -C. I. O.

LOCAL 840, INTERNATIONAL BROTHER-HOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (General Iron Corp.)

and

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, A. F. L. -C. I. O. CASES NOS.

29-CA-3956 29-CA-3969

CASE NO. 29-CB-1890

16 Court Street Brooklyn, New York November 20, 1974

The above entitled matter came on for hearing, pursuant to Notice at 10:30 A. M.

BEFORE:

HENRY L. JALETTE, Administrative Law Judge APPEARANCES:

STEPHEN E. APPELL, ESQ.

16 Court Street, Brooklyn, New York, appearing on behalf of the General Counsel.

VICKI ERENSTEIN, ESQ.

Sipser, Weinstock, Harper & Dorn, 380 Madison Avenue, New York, New York, appearing on behalf of Local 455.

APPEARANCES: (Cont'd)

BRIAN O'DWYER, ESQ.

O'Dwyer & Bernstein, 63 Wall Street, New York, New York, appearing on behalf of Local 840.

(No Appearance)

BURTON R. HOROWITZ, ESQ. Horowitz & Schwartz, 715 Park Avenue, East Orange, New Jersey, appearing on behalf of the Employer.

52

16 Court Street Brooklyn, New York December 2, 1974

57 MR. PETIT-CLAIR: Mr. Mario Acclarino advised me he is the secretary and treasurer of the corporation and Mr. Henry Acclarino is in fact the president.

JUDGE JALETTE: Are these the positions they occupied at the times material herein?

MR. PETIT-CLAIR: Yes, they are, your Honor.

JUDGE JALETTE: Is it so stipulated?

MR. PETIT-CLAIR: Yes, sir.

MR. APPELL: I will so stipulate.

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MARIO ACCLARINO

was called as a witness and, having been first duly sworn by the administrative law judge, was examined and testified as follows:

JUDGE JALETTE: Be seated, please. Give your name and address to the reporter.

THE WITNESS: Mario Acclarino, 73 Miriam Street, Valley Stream, New York.

DIRECT EXAMINATION

- Q. (By Mr. Appell) Mr. Acclarino, what is your title with the company, General Iron Corporation? A. I am one of the principals. Secretary treasurer and chairman of the board.
- Q. Are you familiar with the books and records of the respondent employer? A. To a certain point, yes.
- Q. Would it be a correct statement that in the past year, the past calendar year your company caused to be manufactured, sold and distributed at its plant products valued in excess of \$50,000?

 A. Yes.
- Q. Would it be fair to state that products valued in excess of \$50,000 during that period were furnished to, among others, S & H Green Stamp Company, Abraham & Straus Department Store and the United States Government? A. Yes.
 - Q. To your knowledge do you know how much business you did for the United States Government in the last year? A. You mean '72?
 - Q. '73. A. Fiscal year or calendar year?
 - Q. How do you have your books? A. Fiscal.
 - Q. In the last fiscal year, the last one that ended, how much business did you do with the United States Government? A. Just the United States Government?
 - Q. Yes. A. It would just be a guess. Maybe \$300,000.
 - Q. Would you be certain that it is over \$50,000? A. Yes.
- JUDGE JALETTE: Do you sell goods out of the state?

 THE WITNESS: Yes.

 JUDGE JALETTE: You ship them directly out of the state?

THE WITNESS: Yes.

JUDGE JALETTE: Approximately what value are the goods you ship out of the state annually?

THE WITNESS: I probably -- they may be three-quarters of the business which is shipped out.

JUDGE JALETTE: In dollar amount how much value?

THE WITNESS: \$500,000, \$600,000.

JUDGE JALETTE: Five or six hundred thousand that you ship outside the state every year?

THE WITNESS: Yes.

JUDGE JALETTE: Directly, I mean.

THE WITNESS: Yes.

Q. (By Mr. Appell) Is that normal each year, over \$500,000 of direct sales outside the State? A. I would say yes.

69 JUDGE JALETTE: On the record.

With regard to Manuel Sanchez Augusto, may be stipulated he was hired on May 2, 1974, that he was laid off on May 29, 1974, and that his rate of pay was \$2 an hour?

MR. PETIT-CLAIR: We will stipulate to Augusto.

JUDGE JALETTE: The stipulation is noted.

MR. APPELL: May we also stipulate, your Honor, that Manuel Sanchez, also known as Sanchez Augusto was a machine operator for the respondent employer?

MR. PETIT-CLAIR: That card does not illustrate that, your Honor, it says helper.

MR. APPELL: Well, I would so stipulate.

JUDGE JALETTE: You will stipulate as helper?

MR. APPELL: Known as helper, yes.

70 Charles Bailey. Your Honor, I would amend, move to amend the complaint to correct the spelling B-a-i-l-e to B-a-i-l-e-y.

JUDGE JALETTE: Any objection?

MR. PETIT-CLAIR: No, your Honor, we have had the correction.

JUDGE JALETTE: All right, the motion to amend, to correct the spelling of B-a-i-l-e to B-a-i-l-e-y is granted.

MR. APPELL: I would offer to stipulate that he was hired on May 17, 1974.

He was working as a helioarc welder at a rate of 3.12 1/2 an hour and was laid off on May 28, 1974.

MR. PETIT-CLAIR: So stipulated.

JUDGE JALETTE: The stipulation is noted.

MR. APPELL: I offer the stipulation that Luis Escalera was hired on May 9, 1974 and was laid off on May 27, 1974.

He was employed as a helper and earned \$2 an hour.

MR. PETIT-CLAIR: So stipulated.

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JUDGE JALETTE: The stipulation is noted.

MR. APPELL: I offer stipulation that Carlos Gonzales was hired on April 22, 1974, was laid off May 29, 1974.

He was employed as a helper at an hourly rate of \$2.

MR. PETIT-CLAIR: On this card there is no date as to his leaving.

MR. APPELL: Your Honor, I would amend the proposed stipulation to read on or about May 29, 1974.

His last day worked was in the payroll ending May 29, 1974.

JUDGE JALETTE: Is that satisfactory?

MR. PETIT-CLAIR: Yes, it is amended I gather. He was hired on 4/22/74 and laid off on or about May 29, 1974, somewhere in that neighborhood.

JUDGE JALETTE: The stipulation is noted.

MR. APPELL: I propose a stipulation that Enrique Pellot-Reyes was hired on May 9, 1974 as a helper, earned \$2 an hour and was laid off during the payroll week ending May 29, 1974.

MR. PETIT-CLAIR: That is subject on or about also.

JUDGE JALETTE: I believe he stated it that way.

MR. APPELL: Yes.

JUDGE JALETTE: The stipulation is noted.

MR. APPELL: I should also like to propose a stipulation with respect to Jose Carrian. If your Honor permits I would like to make one final amendment as to the spelling of the name. It should be C-a-r-r-i-o-n.

JUDGE JALETTE: Any objection to the amendment of the spelling of Jose Carrion?

72 MR. PETIT-CLAIR: No, your Honor.

JUDGE JALETTE: The motion to amend is granted.

MR. PETIT-CLAIR: Am I to understand that counsel has Carrion's card in the group of cards that he is now holding?

JUDGE JALETTE: I don't know.

MR. APPELL: May I have a moment, your Honor?

JUDGE JALETTE: Off the record.

(Discussion off the record.)

JUDGE JALETTE: On the record.

MR. APPELL: Your Honor, I would stipulate that Jose Carrion was hired on 5/9/74.

He was employed as a helper and at an hourly rate of 2. He was laid off in the payroll week ending 5/29/74, and he was returned to work during the payroll week ending August 14, 1974.

JUDGE JALETTE: So stipulated.

MR. PETIT-CLAIR: We would also stipulate he is no longer employed as he was fired on 9/20/74.

MR. APPELL: The record so shows, your Honor. I'm not sure of the relevancy of that additional fact but I will stipulate that the records so show.

JUDGE JALETTE: With this addition the stipulation is accepted.

What date was that? 9/ --

MR. PETIT-CLAIR: 9/20/74.

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MR. APPELL: Can we stipulate that in each of those cases where we said on or about or during the payroll week ending May 29th that in each of those cases the records show that each of the people involved worked 16 hours that week.

MR. PETIT-CLAIR: Augusto 16 hours, Bailey 24 hours.

MR. APPELL: Escalera?

MR. PETIT-CLAIR: Eight.

MR. APPELL: Carlos Gonzales?

MR. PETIT-CLAIR: Eight.

MR. APPELL: Enrique Pellot?

MR. PETIT-CLAIR: 16.

MR. APPELL: Carrion is 16?

MR. PETIT-CLAIR: Last week worked was the week of 9/ --

JUDGE JALETTE: The week of May 29.

MR. PETIT-CLAIR: 16.

MR. APPELL: I will so stipulate as to all, each of the six.

JUDGE JALETTE: Is that stipulated then, Mr. Petit-Clair?

MR. PETIT-CLAIR: So stipulated.

JUDGE JALETTE: The hours have been enumerated in the record as to each employee and I will rule it as a stipulation of the parties.

90 (Ms. Joelle McCall, the French interpreter, was sworn by the judge to translate accurately and faithfully)
Whereupon,

MARCELLUS VILCIUS

was called as a witness and, having been first duly sworn by the judge through the interpreter, was examined and testified as follows:

JUDGE JALETTE: Give your name and address to the reporter.
THE WITNESS: Marcellus Vilcius, 1717 Carroll Street,
Brooklyn, Apartment 23.

DIRECT EXAMINATION

- Q. (By Mr. Appell) Mr. Vilcius, were you ever employed with General Iron Corporation? A. Yes.
- Q. When did you begin working there? What date did you begin? A. September 22.
 - Q. Of which year? A. '73.
- Q. Until what date did you work for General Iron?

 A. June 5.
 - Q. Of 1974? A. Yes.
- 91 Q. What was your job at General Iron? A. I was working with some kind of machine that you push with your foot and it solders things.
 - Q. Are you known as what is called a welder? A. Yes.
 - Q. What hours did you work at the company? A. 8 to 4:30.
 - Q. Who hired you? A. Henry.
 - Q. Is that Henry Acclarino, the boss? A. Yes.

MR. PETIT-CLAIR: Your Honor, may I at this time -- I haven't objected to leading questions or characterizations but if he is hired by Henry Acclarino he doesn't have to characterize him as the boss.

I would appreciate if counsel could confine himself to questions.

JUDGE JALETTE: I don't think it is technically critical. We have already identified Mr. Acclarino.

- Q Mr. Vilcius, what rate of pay did you receive while you worked at General Iron? What rate did you start with? A. 185.
- Q. Did there come a time when you got an increase?
 A. Yes, \$210.

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- Q. Do you know how long before you last worked for the company that you received this increase? A. After one month they gave me 12 cents.
- Q. When did you receive your increase to \$2.10 per hour?

 A. I don't remember as to how long.
- Q. During the time you worked for the company did anyone ever tell you whether your work was good or bad? A. I must have been working well because they never told me anything.
- Q. During the time you worked, up until the time you were discharged, did anyone ever say anything to you about your language problem, about any language problem? A. No.
- Q. Did anyone ever complain to you at the shop that they could not understand you, what you were saying? A. No, they never said anything to me.
- Q. Did anyone ever complain to you that you were not able to understand them? A. No, they never said anything about that.
- Q. Did anyone ever tell you that you did not follow instructions before the time you were discharged? A. No, they never said anything such as that to me because as soon as they would show me what I had to do I would do it right away.

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Q. Who told you what to do while you worked at General Iron?

JUDGE JALETTE: Let the record indicate the witness is pointing to someone.

THE WITNESS: That man there.

Q. Sitting on the bench? A. Yes.

MR. APPELL: Your Honor, may we have that man stand and identify himself?

JUDGE JALETTE: Would you state who you are?

MR. PEREZ: Robert Perez.

JUDGE JALETTE: Thank you.

- Q. Is that the man who just, he is the one who used to show you what to do? A. Yes, that was him.
 - Q. What lang age die, he speak to you? A. He spoke English.
 - Q. Do you indees and any English? A. I understand a little.
- Q. Did you er have any trouble understanding Mr. Perez, the man who just stood up? A. No. He would do the thing in front of me and ask me to do it again in front of him and I did it that way.
 - Q. Did he ever complain that you did not do it right? A. No.
- Q. Did any supervisor or any of the bosses of the company ever tell you that you did not follow instructions? A. No.

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MP. APPELL: I ask that the reporter mark this card as General Counsel Exhibit 2 for identification.

(Card marked General Counsel's Exhibit 2 for identification, of this date)

Q. (By Mr. Appell) Mr. Vilcius, I show you General Counsel's Exhibit No. 2 and I show you the signature there. Can you tell us whose signature that is?

JUDGE JALETTE: Just have him tell us what it is.

- Q. (By Mr. Appell) Mr. Vilcius, the card is before you.

 Can you tell the court what that card is?

 A. This is a card that the union gave me to sign.
 - Q. Do you remember what date you were given that card to sign? A. The date is here.
 - Q. Is that the date on the card when you say the date is here? A. Yes.

JUDGE JALETTE: State the question, please.

- Q. Mr. Vilcius -- I'm sorry. A. The person who was with me.
 - Q. Is he in this room today? A. Yes.
 - Q. Could you point him out, please?

Would that gentleman stand, please, your Honor, and be identified?

Let the record show that the witness has referred to Mr. Jose

Pieretti who is sitting here.

JUDGE JALETTE: Mr. Jose --

MR. APPELL: P-i-e-r-e-t-t-i.

- Q. Did there come a time that you signed that card? A. Yes, I did, at the same time.
- Q. Where did Mr. Pieretti give you the card? A. In the factory. I have forgotten where exactly but it was in the factory.
- Q. Do you remember what time of day it was? A. No, I do not remember.
- Q. Was anyone else present, if you know, when Mr. Jose Pieretti gave you that card to sign? A. I have forgotten if there were other people.
- Q. Where were you when you signed the card? A. In the factory but I forgot where exactly.
- Q. Who was present if anyone when you actually signed it?

 A. I don't know who was there.
- Q. Do you remember what you did with the card after you signed it?
- MR. PETIT-CLAIR: Your Honor, Mr. Appell is obscuring my view of the witness.
- A. After I signed the card I gave it back to the person who had given it to me.
- MR. APPELL: I offer General Counsel's Exhibit 2 into evidence.

MR. PETIT-CLAIR: I wish a voir dire on the proffer of the card.

JUDGE JALETTE: You may voir dire.

VOIR DIRE EXAMINATION

- Q. (By Mr. Petit-Clair) Mr. Vilcius, who filled out this card? A. I filled it out.
- Q. Did you write everything which appears on this card?

 MR. APPELL: Your Honor, could the witness be shown the card so that he can see exactly what is on the card?

MR. PETIT-CLAIR: It is the same card?

A. Yes. I didn't have a pen and someone loaned me a pen to write those things.

- Q. Was everything on that card all written with the same pen?

 A. No, it wasn't the same pen because I borrowed pens here and there.
- Q. In't you just testify there was no one present but you and Mr. Pierra? A. I don't know whether there were other people. When I finish a signing the card I brought it to the person who had given it to me.
- Q. I ask you again, Mr. Vilcius and you understand you are under oath, that you filled everything out which appears in ink on that card? A. Yes.
 - Q. And that you filled that out in Mr. Pieretti's presence?

 A. No, I didn't fill the card out while he was there.
 - Q. And that is your signature on that card? A. Yes.
 - Q. You filled out your signature and all of the other writing on the card at the same time? A. Yes.
 - Q. You are sure you filled it all out at the same time?

 MR. APPELL: Objection, asked and answered, your Honor.

JUDGE JALETTE: Objection overruled.

A. Yes.

MR. PETIT-CLAIR: I will stipulate that card in evidence, your Honor.

JUDGE JALETTE: All right, General Counsel's Exhibit 2 for identification is received in evidence.

(General Counsel's Exhibit 2 for identification received in evidence, of this date)

- Q. Mr. Vilcius, how much time if at all does Henry spend in the shop in the working area during the day? A. I don't know how much time but I would say that it is almost all the time is spend in the factory.
 - Q. Mr. Vilcius, do you know a man named Mario Acclarino?

 A. Yes.
 - Q. How much time would you say he stayed in the shop when you worked there? A. He comes in the factory when something happens, when somebody does something and he works further up.
 - Q. How much time would you say Henry Acclarino spent in the shop during the usual eight hour day? A. I couldn't say how much time he spent there because he passes, he comes and goes I would think.
- Q. By the way, when you worked on the job, while you were actually working on the job did you have to talk to anyone in order to do your job? A. No, I did not.

- Q. Did the company ever offer you your job back after you were fired? A. After a while I got a letter and I went and a girl give me \$3 to take a cab and go to work and then I went and I was supposed to go back, I was supposed to go to work and then Henry said he did not need me.
- Q. Do you remember when this was? A. No, I don't remember.
- Q. About how long ago from today? A. A few days. I lost the letter. That is why I did not bring it today.
- Q. Do you know about how many weeks ago this was, or days ago? A. I can't say how many weeks.

MR. APPELL: I have no further questions, your Honor.

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CROSS EXAMINATION

Q. (By Mr. Petit-Clair) Isn't it true that you were offered your job back when you were testifying in another proceeding in August? Amend that to September, September.

THE INTERPRETER: In September?

MR. PETIT-CLAIR: September.

A. No, I wasn't told that.

- Q. Did you testify in September in another matter about your discharge?

 A. I know I testified but I don't know what month or what date. I don't remember.
- Q. At that time didn't you say you were going to school to learn English? A. I don't remember.
 - Q. Mr. Vileius, are you aware you are under oath? A. Yes, everything I said was the truth.
 - Q. Were you placed under oath in September? A. I don't remember.

- Q. At that hearing another lawyer who questioned you for the employer, Mr. Acclarino, didn't he offer you your job back? A. I don't remember.
- Q. You are sure? Look at me, Mr. Vilcius. Are you sure you don't remember? A. I don't remember.
- Q. Isn't it true that you never got a letter from the employer to return to work? A. I received a letter.
- Q. Isn't it true that you testified in September in this same matter? A. I know I testified but I don't know which day or which date or which month.
 - Q. If I told you that what you said at that time was written down would that be true? A. Yes, there was somebody who was writing everything.
 - Q. If I told you what was written down at that time was that you had gone to school to learn English, that you said you had gone to school -- A. I don't remember which day I said that.

MR. PETIT-CLAIR: Does he remember what he said?

THE WITNESS: How could I remember? It happened so long ago.

- Q. Mr. Vilcius, -- A. How would I remember?
- Q. Mr. Vilcius? A. Yes.
- Q. Isn't it true that you were told what to say here today?

 A. Nobody told me anything.
 - Q. It is also true that you spoke to John today?
- MR. APPELL: Your Honor, I object to the form of the question.

 The witness just said something was not true and he is saying is it also true.

JUDGE JALETTE: Rephrase your question.

- Q. Isn't it true that you spoke to John today about this case?

 A. I know I spoke with the man on the other side but --
- Q. Pardon me, Tony, amend that to Tony. A. I spoke with Tony but I didn't speak any other things in related to this.
- Q. When you signed this card for Mr. Pieretti was there anyone else there? A. I don't know.
 - Q. Were the bosses there? A. I don't know.
 - Q. Did anyone else at the shop speak French, Mr. Vilcius?

 A. Before that there was a man who could speak but I never spoke with him. He was Jamacian or Dominician but I never talked with him.
 - Q. Among the people you talked to could anybody speak

 French? A. After the layoff I was the only one left who spoke

 French. There was nobody else.
- Q. Before the layoff was there anybody who spoke French that you talked to? A. Before that there was a person who spoke French but I never spoke with that person.
 - Q. So that I can understand from your answer that you never really talked to anyone in the shop, did you? A. No. When I went to do my job I was speaking with some people.
 - Q. What people? Who? A. The person who was giving me the job and the person who was showing me how to do it.
 - Q. Who was that? A. He is here.
 - Q. Mr. Perez? A. Yes.
 - Q. In the blue jacket? A. Yes.

MR. PETIT-CLAIR: I would ask the court to note the fact that he answered those two questions before they were translated.

Q. Mr. Vilcius, as a matter of fact, you were being shown your job by Mr. Henry Acclarino; isn't that true? A. He was showing me. It was this man who was showing me all the time.

- Q. Is it true that he would show you by demonstrating with his hands and that you couldn't understand what he said but you could under-
- stand what he did with his hands? A. I could understand a little bit what he was saying and I could see what he was doing because I have been there for a long time.
 - Q. But you wouldn't know what to do if you weren't shown?

 MR. APPELL: Objection. The question is argumentative.

 JUDGE JALETTE: The objection is overruled.
 - A. There is a man who is in charge of giving everybody the job, the work rather, excuse me.
 - Q. The question was but you wouldn't know unless you were shown?

 A. You have to show me for me to do what I have to do.
- Q. Isn't it true that after Mr. Pieretti gave you the card you went to another area of the plant?

THE INTERPRETER: That is it?

Q. With the card?

JUDGE JALETTE: Is that your question?

A. I forgot, I forgot.

- Q. Did you just testify a few minutes ago that you took the card away with you from Mr. Pieretti? A. He gave me the card. I filled out which I was supposed to fill out and I gave it back to him.
- Q. And you fill it out in front of Mr. Pieretti? A. No, I did not.
- Q. In fact there was nobody around when you filled it out,right? A. I don't know.
- Q. From whom did you borrow the fountain pen that you filled it out with?

 A. I don't know.
 - Q. Did you borrow a fountain pen? A. Yes.
- Q. One pen? A. No, it is not one pen because there are several colors.

- Q. You mean on the card there are several colors? A. I borrowed a pen and the person needed it and I gave it back and I borrowed another one and the person needed it so I gave it back and I borrowed another one.
 - Q. Who are these people that were giving you these pens? A. The people who were there.
 - Q. What are their names? A. Why would I know their names? You see, somebody there when you tell him "Let me borrow your pen."
 - Q. How many men work at General Iron when you were there? A. Several people.
 - Q. More than 20? A. I don't know. Several people.
 - Q. Less than five? A. Several people because there are a lot of machines.
 - Q. Less than five people? A. More than five.
 - Q. More than ten? A. More, more.
 - Q. More than 30? A. I don't know. Several people. How would I know exactly how many people?
- Q. Not exactly, approximately? A. It is not something

 I'm able to to -- it is not a question we should be asked because
 with all the people working on the factory how many would you know
 are working there?
 - Q. When you filled out the card for Local 455 you were alone,right? A. I don't know.
 - Q. Then you gave it right back to Mr. Pieretti, the card?
 A. Yes, I did.
 - Q. You didn't show it to anyone? A. No. I gave it back to him.

- Q. When you were borrowing these pens did the men stand there and watch you write? A. No.
- Q. So that only you were there when you were writing?A. Yes, just me.
- Q. Do you ever remember a time when you were working at General Iron that Henry Acclarino or Mario Acclarino ever reprimanded you with respect to the work that you did? A. It was always Henry who was checking on my work, it was never Mario.
 - Q. Did Henry reprimand you? A. He never told me anything.
 - Q. As a matter of fact, Mr. Vilcius, didn't he ask several men in the plant to try to communicate with you and tell you what to do?

 A. No, because as soon as I am shown something I do it.
 - Q. Didn't there come a time that you were making items that were half round in shape? A. Yes.
 - Q. On a machine that you would operate with your foot pedal?
 A. Yes.
- Q. And that you would put these items in a box? A. I would put the thing everytime in the box and after awhile I would take them away and put the number on the box.
 - Q. A number? A. Yes.
 - Q. What number? A. I wasn't told to put a number. I was told to put it over there.
 - Q. Isn't it true that on one occasion when you were making these half round objects that you took, the work that you completed, you put them in a pile with other objects of the same kind? A. One day they send me to work some other place. It was a machine that I had to operate with my foot and there were several piles of things.

- Q. As a matter of fact didn't you put what you made in the wrong pile? A. I don't know which place was a good one or which was a bad one because you told me -- excuse me, they told me to go and put it there.
- Q. As a matter of fact you put it in the wrong place; isn't that true? A. I was told to put something, I went and put it there. I'm not the boss.
- Q. As a matter of fact, didn't Mr. Henry Acclarino become angry over what you did? A. Yes, he was mad.
 - Q. Didn't he reprimand you about your work? A. But after that he put me somewhere else to work.
 - Q. Isn't it true that every time he would put you some place else to work that he would have to show you, to actually demonstrate what you were supposed to do? A. Before that he was suppose to show me everything that I had to do and then he didn't show me any more.
 - Q. As a matter of fact, is that because he didn't show you any more according to your recollection, that you didn't do the job properly?

MR. APPELL: Objection. Again as to the form. It assumes facts that are not in evidence, there is no testimony from this witness he didn't do the job properly.

MR. PETIT-CLAIR: He just admitted he put something in the wrong pile and was reprimanded.

JUDGE JALETTE: I will sustain as to the form of the question. It covers much more ground than that particular incident.

Q. So it is true though that you made at least one mistake -- I didn't finish the question -- because you couldn't understand the instructions Mr. Acclarino gave?

MR. APPELL: Objection.

JUDGE JALETTE: Yes?

MR. APPELL: Argumentative.

JUDGE JALETTE: Overruled.

A. I didn't make a mistake because when I finished doing that I think they told me to put it on the other side and when I went over there and I asked where I was supposed to put it they told me to put it there.

So I didn't make a mistake.

- Q. And you never made any mistakes while you worked at General Iron? A. No.
- Q. You understood all the instructions that Mr. Acclarino told you?

 A. After I was shown how to do something once I always did it well.
- Q. But you couldn't understand if you were just told?

 A. Well, even when you are at school they have to show you.
- Q. You never talked to the other men where you worked either? A. I was always very careful about my work and I didn't talk to anybody.
- Q. Never? A. I talked with the people who were showing me how to do the job.
 - Q. Did you ask them questions in English? A. Yes
 - Q. Would you tell me now in English what questions you asked them? A. I don't remember.
 - Q. Would you ask me any question in English about the job that you did at General Iron?

MR. APPELL: Objection. The witness just said he did not remember any, Your Honor.

JUDGE JALETTE: Objection overruled.

A. I don't remember what question I asked him.

Q. No, I want you to ask me any question in English about the job you did at General Iron.

MR. APPELL: Objection.

JUDGE JALETTE: Overruled.

- A. (In English) What is that? What is that? You know, what is that?
 - Q. About the machine? A. (In English) What is that name?
 - Q. Ask me a quest on about the machine you worked on?
- A. (In English) What about this that I mak? What about this that I am making?

JUDGE JALETTE: He has answered you.

Q. The question is what about this that I make, and if I told you it was a wok handle.

THE INTERPRETER: I don't know what that is.

MR. PETIT-CLAIR: A handle.

THE INTERPRETER: A handle, okay.

Am I doing it in English?

MR. PETIT-CLAIR: In English. I want to talk to him in English.

JUDGE JALETTE: What are you trying to establish?

MR. PETIT-CLAIR: I'm trying to establish the fact --

JUDGE JALETTE: Obviously there is a language problem. There isn't any question.

MR. PETIT-CLAIR: That is all I want to demonstrate.

JUDGE JALETTE: I assume we wouldn't be examining the witness through an interpreter.

MR. PETIT-CLAIR: The question was whether it was a sufficient language problem to support the discharge.

JUDGE JALETTE: That is right.

MR. PETIT-CLAIR: That is what I am anticipating now.

Q. As a matter of fact, Mr. Vilcius, Mr. Acclarino would have to show you as well as tell you; isn't that true? A. The fact is that as soon as he showed me how to do it I always did it.

Q. Could you name the machines you worked on, what they were called? A. I don't know the names of the machines. When you are showed how to do something you do it.

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REDIRECT EXAMINATION

- Q. (By Mr. Appell) Mr. Vilcius, do you know if there was anyone else in the shop who had trouble speaking English who worked in the shop? A. There were other people who spoke Spanish.

 There were a lot who didn't speak English.
- Q. Whenever you did a job was there ever a time that you had to do it over again because someone told you it wasn't right?

 A. No.
 - Q. How often did someone show you what to do?

How often did that take place? A. They would show me twice and I would show the person to see if it was good and they would tell me that is all right and I would start.

Q. The other lawyer asked you a question about a time when you put something in the wrong place.

Do you remember such a time? A. No.

- Q. What is it that he said? A. I don't remember which day it happened.
- O. Do you remember how long it was before you were fired that this thing happened? A. It was the same day, the same day, the same Friday.
 - Q. What exactly happened at that time?

What is it that you did and what did the company bosses say to you? A. When I finished doing what I was doing and went to put it over the place where I was supposed to put it and when I arrived there I asked where I was supposed to put it.

I was told to put it in that box and I put it in that box.

- Q. Who told you to put it in that box? A. The people who were working inside, I don't know.
 - Q. Inside what? A. Inside the factory.
- Q. And you put it where you were told to put it?

 A. That is when I was told to put it there, I put it where I was told to put it.
- Q. What happened after that? A. Then I was told that I wasn't supposed to put it in the place where I had put it and they sent me to work in another place.
 - Q. What happened when you were working in the other place? Anything happen then? A. After a few hours he gave me my check and they told me I was laid off and I asked why I was laid off.

Then I asked why am I being laid off? Is it because of my work, and I was answered no, it is because of my English.

RECROSS EXAMINATION

- Q. (By Mr. Petit-Clair) Mr. Vilcius, you testified that the day that you put what you made in the wrong place was the same day that you were laid off; is that true? A. I don't know because they told me to do something and I did it and then after I put the thing there it was somewhere else.
- Q. But was that the same day that you were laid off? Right? A. Yes.
- Q. And customarily in the factory Mr. Henry Acclarino of Mr. Perez you pointed to before, the man in the blue shirt, they would tell you and show you what to do? A. Yes.
 - Q. Or Mr. Henry Acclarino? A. No, when I just arrived Henry showed me.

- Q. But was it after that time that he would ask Mr.

 Perez to show you? A. Henry sent Mr. Perez to show me.
- Q. Who showed you on the day that you were fired where to put the things you were making? A. Somebody from the factory.
- Q. But it wasn't a boss? A. No. The boss told me to go and put the thing over there and when I arrived there I asked someone where to put it.

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16 Court Street Brooklyn, New York December 3, 1974

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LEROY HOWARD

called as a witness, having been first duly sworn by the Judge, was examined and testified upon his oath as follows:

JUDGE JALETTE: Be seated, please.

Give your name and address to the Reporter.

THE WITNESS: Leroy Howard.

JUDGE JALETTE: Mr. Howard --

THE WITNESS: 50 Monument Walk, Brooklyn, New York.

JUDGE JALETTE: Speak up louder, will you please.

DIRECT EXAMINATION

- Q. (By Mr. Appell) Mr. Howard, by whom are you employed? A. General Iron.
- Q. How long have you worked for General Iron? A. Two years now.
 - Q. What is your job at General Iron? A. Welder.

- Q. Mr. Howard, is it correct that you are appearing here today because you got a subpoena? A. That's correct.
 - Q. Now, do you recall when Local 840 was the representative of the workers in your shop?

Remember that being the case? A. Yes.

Q. And did you have anything to do with Local 840?

A. Well, not especially.

I was only shop steward.

- Q. When did you become shop steward, do you remember that? A. I believe it was around February of this year.
 - Q. Of this year? A. Yes.
- Q. Now, did there come a time when you contacted another union? A. Yes.
- Q. Do you remember when that was, the first time?

 A. I believe it could have been around March or April sometime.
- Q. Do you remember which union that was? A. Not the name, not now, no.
 - Q. Do you know Mr. Nuchow? A. Yes.
- 194 Q. (By Mr. Appell) Do you know Mr. Nuchow? A. Yes.
 - Q. Did he ever talk to you after that time after you contacted this other union? A. Yes, he did.
 - Q. Do you remember when that was, if you remember?

 A. Not offhand, no.
 - Q. What did he say to you at that time?

 JUDGE JALETTE: Let's find out where it was?

 MR. APPELL: Yes.
 - Q. (By Mr. Appell) Do you remember where he spoke to you? A. At the shop.

- Q. Was anyone else precent? A. Not at the time.
- Q. What did Mr. Nuchow say to you at that time?
- A. He said he heard I was trying to get another union into the shop.
 - Q. Did you say anything? A. I told him yes.

 JUDGE JALETTE: Tell us the whole conversation.
- A. Oh. I told him that the people wanted another union, you know, and that they weren't satisfied with him, you know, they want him out the shop.

JUDGE JALETTE: All right.

Continue. Give us the whole conversation.

A. That's about it.

- Q. Was there anything else? A. Then he said he wanted to talk to the people and see, you know -- see if he can get a contract in the shop to represent the peoples -- he wanted to get a contract in the shop for the peoples and do a good job for the peoples in the shop and he wanted the people to give him a chance to represent them.
- Q. Did he talk with other people in the shop at that time?

 A. Well, he had a meeting, yes, he did.
 - Q. Were you present at that meeting? A. Yes.
- Q. And did Mr. Nuchow talk to people at that time?

 A. Yes, he did.
- Q. Do you remember what was said at that time? A. He told the people to give him a chance to get a contract in the shop, he would do a good job for the peoples.
- Q. Did there come a time when you met with Mr. Tony
 Schifano of Local 455? A. Yes.
 - Q. Do you remember when the first time was? A. Not by date.
 - Q. Do you have any idea by month about when it was?

 A. Around May.

i believe so.

I am not sure.

- Q. Did there come a time when you gave out cards for Local 455 to the men? A. Yes.
- Q. Did you ever receive any cards from the men signed?
 A. Yes, I did.
 - Q. You know a Mr. Charles Bailey? A. Yes, I do.
 - G. Who is Charles Bailey? A. He was a welder.
 - Q. A welder? A. Yes.
 - Q. Did he work in the shop with you? A. Yes.
- Q. Did there come a time when you gave him a card to sign? A. Yes, it was.
 - Q. Did you see him sign the card? A. No, I didn't.
- 197 Q. Did there come a time when he gave you the card back signed? A. Yes.
 - Q. Do you remember when and where that was about?
 - A. I think he gave me the card at my bench where I was working.
 - Q. Do you remember what month or date that was?
 - A. I think it was in the month of May, the same month that I got in touch with 455.
 - Q. Do you remember what Mr. Fieley said to you when he gave you the card back? A. He didn't say anything.

He just told me here's the card.

- Q. Do you know if anyone else was present when Mr. Bailey gave you the card back? A. No.
- Q. Now, when you asked other people to sign cards, where did you do this? A. In the shop.
- Q. Was it during working time, during lunch break, during coffee break? A. During break time.
- Q. Do you know if any bosses saw you do this? A. No, I don't know whether any bosses saw me.

- Q. And when you say in the shop, where did you give these cards exactly? A. Some gave in the -- at my bench, near the locker room.
 - Q. (By Mr Appell) How long after you gave out these cards did Mr. Nuchow tak to you? A. I am not sure.
 - Q. Did he speak to you in person or by phone?

 A. First he spoke to me by phone.
 - Q. And were you in the shop on the phone or at home on the phone? A. In the shop.
- Q. What did Mr. Nuchow say to you at that time?

 MR. O'SWYER: Again, I object.

 Improper foundation for the telephone conversation.

 JUDGE JALETTE: Objection sustained.
 - Q. (By Mr. Appell) How do you know it was Mr. Nuchow?

 A. Well, he told me his name.
 - Q. Who called you to the phone? A. One of the girls upstairs, one secretary.
 - Q. Did you recognize his voice? A. Yes, I did.
 - Q. Do you remember about what date this would be?

 A. No, I don't.
 - Q. Do you remember the month? A. It was the same month that I got in touch with 455. in May, I think around May.
 - Q. May? A. I believe.
 - Q. What did Mr. Nuchow say to you at that time? A. He said he heard I was trying to get another union into the shop, I had promised to get a contract with him, you know, and the people had agreed to give him another chance in the shop, to get a good contract.
 - Q. What did you say to him? A. I told him the people changed their mind, they say they didn't want it.

- Q. Did there come a time after that when Mr. Nuchow visited the plant again? A. Yes.
 - Q. Do you remember when that was? A. I believe the next day after that conversation, I believe.
 - Q. Do you have any recollection what part of May that was, early part, middle part?

MR. PETIT-CLAIR: I haven't objected thus far, but counsel has asked out of ten questions at least leading questions.

JUDGE JALETTE: Objection overruled.

- Q. (By Mr. Appell) Do you remember what time it was?

 A. It could have been around the middle of the month, I believe.
- Q. When Mr. Nuchow came down that time did he speak to you at that time? A. Yes.
- Q. Where did he speak to you? A. He spoke to me at my bench where I was working.
- Q. (By Mr. Appell) Was anyone else present when he spoke to you at the bench? A. No, there wasn't.
 - Q. Do you remember the date of that conversation?

 A. No, not exactly.
 - Q. What did Mr. Nuchow say to you and what did you say to him at that time? A. He said that I -- I was suppose to work with him to get a new contract and I turned my back on him and stuff like that.
 - Q. And what else happened that day, if you remember?

 A. So he called a meeting, taking with the guys in the shop.
- Q. Were you present at that meeting? A. Yes, I was.
 - Q. Where did that meeting take place? A. I believe it was in the spot welding department at that time, I think.

Q. How many people were present at that meeting?

A. Maybe 20 or more.

I am not sure.

- Q. Who were these people that attended? A. I don't know all by name.
 - Q. What were they doing there?

Were these workers? A. They were workers.

Q. What happened at that meeting?

What did Mr. Nuchow say, what did everyone else say and what happened at that meeting? A. He say the people had promised to give him a chance to get a contract in the shop, and all of a sudden he heard they went down and got another union on him and stuff like that.

Q. What else happened at that meeting that you remember?

A. So -- I can't remember everything that happened.

I know after that he went around and talked with some of the guys in the shop afterwards.

- Q. Do you remember anything about a vote being taken?
- A. Yes, there was a vote taken after that.
- Q. Well, what happened? A. There was another meeting called.
 - Q. I see.

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And when was this other meeting called? A. I think around ten o'clock in the morning.

- Q. Was it the same day as this first meeting or another day? A. The same day.
- Q. What happened at that second meeting? A. He asked -- I had a vote -- had the people raise their hand vote, you know, who all wanter him to still represent them or who wanted 455.
 - Q. And do you remember the results of that vote? A. Yes.
- Q. What were the results? A. It should have been 11 to 10 vote in the favor of 455 but Nuchow disqualified one of the votes.

- Q. Did he say why he disqualified one vote? A. He say he wasn't a union member.
- Q. Now, did you have a locker at the company?

 A. Yes.
 - Q. Did you lock this locker all the time? A. Yes, I did.
 - Q. Did there come a time when your locker was broken into? A. Yes.
 - Q. Do you know when that was? A. Memorial Day weekend.
- Q. And when did you first discover it? A. After I came back to work that Monday -- that Tuesday, -- I think -- I think it was a Tuesday.
 - Q. Did you know if any other locker was broken into?
 A. Yes.

They all was.

- Q. What was -- was anything in your locker that you left on Memorial Day that was not there now? A. Cards they had signed for 455.
- Q. Do you remember whose cards they were? A. Only one offhand.
 - Q. Who was that? A. Charles Bailey.
 - Q. How many other cards did you have in there?
- A. Two other besides that one.
 - Q. Did you ever get them back? A. No, I didn't.
 - Q. Do you know where they are now? A. No.
 - Q. All right.

Now, do you know Henry Accarino? A. Yes, I do.

Q. Has he ever spoken to you? A. Yes.

- Q. Did he ever talk to you during May or June of 1974?
- A. I am not sure of the time but I think this was during that time.
 - Q. Was anyone else present when he spoke to you?A. No.
 - Q. Did he speak to you once or more than once?

 A. He spoke to me more than once.
 - Q. Can you tell us what Henry Accarino said, and try to, if you can remember, to tell us at which time each thing took place? A. I can't tell you the exact time.

But it was during the day.

And he spoke to me, said, you know, I should leave the union alone, you know, and get out of the union.

I should stop influencing the people around the shop to vote for 455. And --

- Q. Do you remember -- go ahead. A. And he said 455 wanted, they won't get a contract in the shop, he would close the place down before he would give them a contract.
- Q. Now, do you remember when it was he told you to stop influencing the men to vote for 455? A. Not by date or month.

I am not sure.

- Q. Was anyone else present when he said -- he told you that? A. No.
- Q. And do you remember when it was that he told you that 455 would never get a contract, he would close the place down first? A. Not by date or month.
 - Q. Was it after Memorial Day or before, would you say?

 A. Yes, it was after Memorial Day.
 - Q. Do you remember how long after? A. No, not exactly.

- Q. When Henry Accarino said to you that 455 would never get a contract, he would close the place down, was anyone else present when he said that to you? A. No, not that I can remember.
- Q. How many times did he say that to you that you remember? A. Maybe two or three times.
- Q. Do you remember the actual places you were when he said them to you? A. At my bench.
- Q. Did you ever hear Mario Accarino speak to any employees? A. Not offhand.
- Q. (By Mr. Appell) Do you remember Mario Accarino ever speaking to two Italian speaking employees?

MR. O'DWYER: Objection, Your Honor.

JUDGE JALETTE: Your objection is overruled.

- A. I seen him talking to two Italian guys, yes.
- Q. Where was that? A. It was near the shipping department.
- Q. Do you remember when it was? A. During the time -- this was suppose to be the hand raising vote for Nuchow.

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- Q. (By Mr. O'Dwyer) How many cards did you give out for 455? A. I have no record of that either.
 - Q. You don't remember? A. No.
 - Q. Do you remember how many cards you got back?A. No, I don't.
 - Q. Were you the one that took the cards and gave them to Tony here? A. Yes. I gave the cards.

Q. Did you give them all at once or in dribs and drabs?

A. In and out, you know.

All wasn't given at one time.

Q. About how many would you say in the end you gave?

A. I can give you a close idea, you know.

Maybe 20, 18, 20.

219 Q. 18, 20 cards? A. Yes.

Or maybe 21, something like that. I am not sure.

- Q. And how many people were in the unit? A. In the union?
- Q. How many people were production and maintenance employees at General Iron? A. I don't know the exact --
 - Q. Not exactly, as well as you can remember.

JUDGE JALETTE: Approximately how many employees are there -- are in that factory?

A. At the time I would -- just like say, it could have been -- maybe 30, 25 or 30 employed, but they all wasn't in the union.

Q. How many times did Mr. Nuchow meet with the employees in a group? A. Quite a few times.

I am not sure.

- Q. Would you say it's over five times in April and May?

 A. I would say five or more.
 - Q. Five or more times? A. Yes.
 - Q. And where would he meet with them? A. In the shop.
 - Q. Would he sometimes meet with them outside the shop?
- A. Well, not necessarily meet with them out there, but he'd called a meeting like on a sidewalk or something like that, but not necessarily just meet with him, you know.
 - Q. During break time? A. Yes. Something like that.

- Q. Did he ever have a discussion with Mr. Henry
- Accarino about these meetings? A. Who?
 - Q. Mr. Accarino? A. Would you mind rephrasing that, please?
 - Q. I am sorry.

Did Mr. Accarino and he ever have a discussion in your presence about these meetings? A. Not that I can recall.

- Q. Did Mr. Accarino ever tell Mr. Nuchow to get out of his shop? A. Yes.
 - Q. Do you remember when that was? A. No, I can't. I cannot say.

Just like I say, you know, I cannot keep all these dates and weeks --

Q. I understand that.

I understand it.

Do you remember what Mr. Accarino said? A. Well, he asked him to get out of the shop, that the men should be working, you know, and he need the work -- production.

- Q. Did he tell Mr. Nuchow he was going to call the police on him? A. Yes, he did.
- Q. Was that once or more than once? A. I could say more than once.

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CROSS EXAMINATION

- Q. (By Mr. Petit-Clair) Mr. Howard, you stated, did you not, that you are employed at the present time by General Iron?
 A. Yes, I am employed.
- Q. How long have you worked there? A. About two years now.

Q. And when you began two years ago with General Iron what position did you occupy, what job did you have?

A. When I started work?

Q. Yes.

When you started working? A. Welder.

Q. After you started working there what was your salary at that time? A. When I started my salary was 3.75 an hour.

JUDGE JALETTE: You started at 3.75?

A. 3.75.

Q. Did you receive any raises? A. Yes.

Q. And how long had you been working there when you received your first raise? A. A month, I think.

Q. Pardon me? A. A month. One month.

Q. Will you speak up, I have difficulty hearing you.

And what was your salary at that point? A. The salary went then to 1.65.

I think 1.65.

Q. Do I --

JUDGE JALETTE: \$165?

THE WITNESS: Yes.

JUDGA JALETTE: A week?

231 THE WITNESS: Yes.

JUDGE JALETTE: For 20 hour week --

THE WITNESS: I mean -- 155.

JUDGE JALETTE: You were paying -- you were paid 3.75 an hour at first?

THE WITNESS: Yes.

JUDGE JALETTE: Then you went to \$155 a week?

THE WITNESS: Yes.

JUDGE JALETTE: For 40 hours?

THE WITNESS: Yes.

- Q. (By Mr. Petit-Clair) Did you receive any raises after that? A. Yes, I did.
- Q. What is your present salary? A. Present salary is \$200 a week, \$5 an hour.
 - Q. I am sorry? A. Five dollars an hour.
 - Q. Five dollars an hour, \$200 a week? A. Yes.
- Q. What position do you occupy now, what's your job?

 A. Welder.
 - Q. Still welder? A. Yes.
- Q. Are you a supervisor? A. Well, I was taken out of the union during this, you know, since this started, you know, getting the new union and everything, I was taken out of the union and everything, and they say I was a supervisor.

I don't know why.

- Q. Pardon me? A. I was given a title as a foreman, but as far as I am concerned, you know, I never was a foreman.
- Q. Weren't you asked if you wanted to be a foreman?

 A. No, -- well, I was told I should take a position and leave the union alone.
- Q. You were asked then if you wanted to be a foreman, is that not true? A. Yes.
- Q. And you accepted the position? A. I wasn't asked in that manner that you are saying, no.

I was told by one of the foremen that I should take the position --

Q. Did you receive a raise --

MR. APPELL: Your Honor, may the witness finish his answer.

JUDGE JALETTE: Finish.

THE WITNESS: Yes, I received a raise.

Q. When you became a foreman you recieved a raise?

A. Yes.

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- Q. How much of a raise was that? A. That was \$31.
- Q. Per week? A. Yes.
- Q. When you became a foreman. And you didn't refuse to become a foreman? A. No.
- Q. Up until February of 1974 you were shop steward, were you not, in Local 840? A. That's right.
- Q. And prior to that time no one had ever commented to you about your activities with respect to the union -- about your activities with respect to the union, while you were union shop steward? A. No.
- Q. And you received your raises during that time, isn't that true? A. Yes.
- Q. There came a time in March of this year when you personally decided that Local 840 was not doing an adequate job for you, is that not true? A. No, you're wrong.
 - Q. I understood your testimony that you called Mr. Schifano -- A. Yes.

Because the peoples in the shop --

Q. Was it --

MR. APPELL: Excuse me, Your Honor, again I don't think he finished.

JUDGE JALETTE: I thought he had finished --

MR. APPELL: He said --

JUDGE JALETTE: I thought I heard a complete answer.

- Q. (By Mr. Petit-Clair) You contacted Mr. Schifano?
- A. Yes.
- Q. And were you personally satisfied with Local 840?

 A. Sure.

I was willing to negotiate the contract, you know, upstairs with them for the peoples, now.

JUDGE JALETTE: You were willing to do so? THE WITNESS: Yes.

- Q. Do I understand you to mean that you were aiding Mr. Nuchow in the negotiating of a contract for Local 840 with the Accariono brothers, General Iron? A. Yes, sir.
- Q. And in March of April you contacted Mr. Schifano?

 A. Yes.
- Q. Why? A. Because -MR. APPELL: Objection.

 JUDGE JALETTE: Overruled.
 - A. The people refused to, you know, to -- they didn't want no part of Mr. Nuchow, they didn't want to negotiate a contract with him and they refused to come to my meetings I was trying to call, they just said they didn't -- they wanted Mr. Nuchow out.
 - Q. And you were the shop steward? A. Yes.
 - Q. After you contacted Mr. Schifano you in fact were the one he gave the cards to for Local 455? A. What?
 - Q. You were the man he gave the union cards to, weren't you? A. You mean Mr. Schifano gave me the union cards?
 - Q. Yes. A. Yes.
 - Q. He gave you union cards? A. Yes.
 - Q. And you in turn distributed these cards, did you not?
 A. Yes.
- Q. How many cards did you distribute? A. I am not sure.
 - Q. Was it more than one? A. Yes, more than one.
 - Q. Was it more than five? A. I am not sure.
 - Q. Did you give some of these cards to Mr. Pieretti?
 A. Yes, I did.
 - Q. Did you request that he assist you in getting people to sign cards? A. Yes.

I asked if he would help, sure.

- Q. During this period of time you continued to work at General Iron?

 A. Yes.
- Q. And there was no comment about your union activity?

 A. No.
- Q. And there came a time, did there not, when you had distributed these cards, and some were given back to you by fellow workers, is that not true? A. Yes.
 - Q. And these cards were signed, were they not? A. Yes.
- Q. Would you name -- could you name the workers who gave you those cards? A. No, I could not.
- Q. Could you tell me how many cards you received? A. I am not sure.
 - Q. You're only sure of one signature, is that not true, Mr. Bailey's? A. Yes.
 - Q. Now, on the date you are talking about, Memorial Day Weekend, all of the lockers in the plant had been broken into, had they not?

 A. That's right.
 - Q. Was the locker room in disarray, disorderly? A. Yes, it was.
 - Q. And were there possessions of various workers missing?
 A. What?
 - Q. Were there possession, personal possessions missing?
 - A. Only from me that I, you know -- that others -- I know --
 - Q. I can't hear. A. I know nothing about what other people lost, I don't know -- I don't know anything was taken from them or not.
 - Q. But you lost things in addition to the cards? A. Yes.
 - Q. Personal items? A. No personal items, just I lost a. lock. It was cut off.
- JUDGE JALETTE: You lost a lock?

 THE WITNESS: My lock was on there, right.

JUDGE JALETTE: What else did you lose?

THE WITNESS: Three cards.

JUDGE JALETTE: That's it?

THE WITNESS: Yes.

- Q. (By Mr. Petit-Clair) You were able to recover all of your other possessions? A. Yes.
 - Q. Do you know who broke into the lockers? A. No, I don't.
 - Q. Do you know who took the cards? A. No, I don't.
- Q. Now, are you familiar with Mr. Pieretti and Mr. Vilcius, Marcellus Vilcius? A. We work together -- we was working together.
- Q. And they were fired in the summer, early summer of this year? A. Yes.
- Q. And did you observe them throughout the period that they worked for General Iron? A. What do you mean? I don't understand.
- Q. You have testified that you work for General Iron for two years? A. Yes.
- Q. Were you working there before they came to work?
 A. No.

Only one of them I was, Marcellus, he came after.

Pieretti was working there before.

- Q. Mr. Pieretti was working there before you were working there? A. Yes.
- Q. And during the time that you were working with these two individuals did you ever observe them being reprimanded by either one of the Accarions? A. No.
- Q. Did you ever hear the Accarions complain of the quality of their work? A. No.
- Q. Now, you have given three statements, have you not, to agent of the Labor Relations Board? A. Yes.

- Q. Now, if I were to tell you that that previous statement given in August of this year that you said that Mr. Henry Accarino told you that Pieretti was messing up a lot of work -- A. Yes, I can remember that now, yes, he did.
- Q. -- and in fact Mr. Accarino did tell you that, did he not?

 A. Yes, he told me.
- Q. And he told you he was going to fire Mr. Pieretti because of that, didn't he? A. That's right.
- Q. (By Mr. Petit-Clair) Mr. Howard, you have never been fired because of your union activity, have you? A. No, I haven't.
 - Q. You ever been laid off? A. No.
 - Q. You suffered no penalties as a result of your activities with two different unions? A. No.
 - Q. Now, you testified that Mr. Accarino, Henry Accarino, had told you that he wouldn't -- 455 won't get a contract? A. That's right.
 - Q. And he would close down before he would give them a contract?A. That's right.
 - Q. But you had no conversations with Mr. Mario Accarino with respect to that? A. No, that I can recall.
 - Q. Now, did he in fact close down, Mr. Accarino? A. No, he didn't.
 - Q. Did he promote you? A. Yes.
- Q. During that same period of time? A. I am not sure if it was the same period of time.

I would say it was much later.

Q. Well, when were you promoted? A. I could say about a couple of months ago, maybe two months.

About that time.

- Q. Was it in July? A. I think it was -- let me see -- around -- either last July or first of August, somewhere along there.
- Q. Well, sometime around the first of August? A. It could have been the last of July, I am not sure.

Around the last of July, the first of August.

- Q. At the time you were promoted you were still active? A. Yes.
 - Q. With respect to organizing people for Local 455? A. No. I was not organizing.
- Q. Weren't you handing out cards? A. The cards was all finished.
 - Q. Pardon me? A. That was all finished.
- Q. That had been done? A. Yes.
 - Q. Do you recall giving a statement to the Labor Relations Board wherein you stated --
 - MR. PETIT-CLAIR: This is the problem with these affidavits, Your Honor, it's a marginal note.

Bear with me.

- Q. -- that you said that you never saw any boss observe Mr. Pieretti or you give out cards? A. That's right, I never saw --
- Q. I didn't hear you? A. I hadn't seen either one of the bosses see us -- I mean I didn't see any bosses, you know, during the -- that time that we were giving out the cards.
- Q. And as a matter of fact, during the period of time that you were conducting your union activities you never saw the bosses observing you or your fellow workers? A. No, I didn't.

Q. (By Mr. Appell) Was there anything in your locker when it was broken into that was not taken that remained in your locker?

A. Sure.

My work clothes, shoes, they were not taken.

Q. What's the last thing you said? A. My work shoes and uniform.

JUDGE JALETTE: Mr. Howard, when Mr. Accarino approached you and spoke to you about 455 winning and there being no contract, where were you at the time?

THE WITNESS: Near my bench.

My work table.

JUDGE JALETTE: Tell me how this conversation began.

THE WITNESS: Well, he told me that --

Q. (By Judge Jalette) How did it begin?

I assume you were working. Describe the situation. A. I was working, and he came up for some work for me to repair, you know, and he said Howie, it's about that union, he say you should leave that union alone, you know, because it cannot -- he said I don't want that union in here, that's what he said.

He said that union, I can't afford to pay what that union is asking for.

He said that union will rob me, just like that.

- Q. Go ahead. A. He didn't say too much. Just said --
- Q. What did you say? A. I told him I would no longer -- I was no longer interested in, you know, pushing the idea of the union, you know, and I said the peoples wanted the union, so I got involved.

And it just happened, that's all.

- Q. Is that the entire conversation? A. Yes.
 - Q. (By Mr. Petit-Clair) Mr. Howard, you stated that your conversation with Mr. Henry Accarino which occurred on only one occasion, isn't that true? A. What?
 - Q. Your conversation with Mr. Henry Accarino concerning the close down of the shop occurred on only one occasion, didn't it?

 A. No.

More than one occasion.

Q. Well, you testified it occurred on one occasion.

MR. APPELL: I object to that characterization.

JUDGE JALETTE: Objection sustained.

That was not the testimony of the witness.

- Q. And as a matter of fact, didn't you just testify that Mr.

 Accarino spoke to you generally about the fact that Local 455's demands would be economically impossible for him to meet? A. Yes.
 - Q. And that the economics of the situation would close the shop, is that not true? A. That's right.
 - Q. So that he never told you directly I am going to shut down 455 -- if 455 wins? A. Yes, he did.
 - Q. In those words? A. He said I would close the place down.
 - Q. What? A. He said I would close the place down before I would give them a contract.
 - Q. Now, when you were questioned by the Judge you didn't relate that conversation. A. The Judge didn't ask me that directly.
- MR. APPELL: I was going to note that for the record, Your Honor.

There was a petition filed in Case Number 29-RC-2669 by Local 455 on June 3, 1974.

As I understand it Local 840 subsequently disclaimed any interest in the shop.

An election was finally held last week, after, to my understanding Local 917 claimed an interest of the I.B.T. and the director ruled that its application was not timely, the hearing had closed, an election had been directed, an election was held last week.

JUDGE JALETTE: Yes or no ballot?

MR. APPELL: Yes.

Local 455 did not get a majority and it's my understanding from counsel for the charging party herein, Local 455 that it has prepared objections to the conduct affecting the results of the election.

JUDGE JALETTE: I wasn't concerned -- I simply wanted to know about the petition and who was involved in it.

MR. APPELL: While we are on this subject, I would like you to take judicial notice of the fact, and perhaps counsel for the Respondents will stipulate, that hearing in Case Number 29-

260 RC-2669 was held on July 8th and July 15th, 1974 before a Hearing Office of the Board.

And that on July 15th the witnesses presented by the union were Leroy Howard and Jose Pieretti.

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JOSE PIERETTI

called as a witness, and having been first duly sworn by Judge, was examined and testified upon his oath as follows:

JUDGE JALETTE: You understood the giving of the oath THE WITNESS: Yes.

JUDGE JALETTE: All right.

Give your name and address to the reporter.

THE WITNESS: Jose Pieretti.

MR. PETIT-CLAIR: Mr. Pieretti, could you raise your voice a little, I find it difficult to hear you?

THE WITNESS: Jose Pieretti. 2007 Surf Avenue, Brooklyn.

DIRECT EXAMINATION

- Q. (By Mr. Appell) Mr. Pieretti, did you ever work for General Iron Corporation? A. Yes.
- Q. When did you begin working there? A. I think it's 1971.
 - Q. Do you remember what month? A. No.
- Q. And were you discharged from General Iron -- fired? Yes or no. A. I don't understand.
- Q. Were you ever fired by your company, let go, dismissed?

JUDGE JALETTE: Did you lose your job at General Iron?
A. Yes.

- Q. What day was the last day you worked? A. July 24, '74.
 - Q. What was your job with General Iron? What work did you do? A. Spot welding.
 - Q. Spot welding? A. Assembling, -- grinding machine, power press machine.
 - Q. And who gave you your work to do everyday?

 A. Henry Accarino.
 - Q. Anyone else? A. Robert Perez.
 - Q. Anyone else? A. No.
 - Q. At the time the company let you go what was your rate of pay?

How much money were you making? A. \$193 a week.

Q. When you started with the company what were you earning?

When you started with -- started the work? ... I think it was 1.85 an hour.

- Q. Were you a member of Local 840? A. Yes.
- Q. While you worked for the company did nay of your bosses tell you whether your work was good or bad? A. No. In the beginning, not until May 28th.

265 JUDGE JALETTE: Until May?

THE WITNESS: Yes, I had no trouble at all, until May 28th, after Memorial Day.

JUDGE JALETTE: Of what year?

THE WITNESS: 1974.

- Q. (By Mr. Appell) Did there come a time when you gave out cards for Local 455? A. I don't understand so well.
- Q. Did you ever give out cards to the other workers for Local 455? A. Yes.
- Q. Where did you get these cards from? A. Tony gave it to me, Tony Schifano.
 - Q. Is that the man sitting at the table? A. Yes.
- Q. And when did he give them to you, do you remember the date? A. May 10th.
- Q. And where did he give them to you? A. Neptune Avenue on the corner of Stillwell Avenue, in a restaurant.
 - Q. Was anyone else present with you?

Was anyone with you at that time? A. Leroy Howard, a guy name Davy, and Herman Hernandez, and the other Junior, but I don't know the name.

Q. After that time did you give out cards to the other workers? A. Next day in the morning.

- Q. Do you recall how many cards you gave out?

 A. All the Spanish people I give cards, but I don't know exactly how many people I give cards.
- Q. Where did you give these cards out? A. Before started working, morning, in the shop.

JUDGE JALETTE: Inside the shop?

Inside the shop?

THE WITNESS: Inside the shop.

- Q. (By Mr. Appell) Did you ever sign a card for Local 455? A. I sign my own card.
 - Q. You did? A. Yes.

MR. APPELL: May I ask the Reporter to mark this card as General Counsel's Exhibit 3 for identification?

(Whereupon, the above described card was marked as General Counsel's Exhibit 3 for identification.)

Q. (By Mr. Appell) And --

JUDGE JALETTE: Show it to counsel.

MR. APPELL: Yes, sir.

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Your Honor, may I ask that another series of cards be marked as General Counsel's 4 through 8 for identification respectively?

JUDGE JALETTE: State for the record which is which.
MR. APPELL: Yes.

As General Counsel's Exhibit 4 a card of Jose Carrion, as General Counsel's Exhibit 5 a card of Luis Escalera, card as General Counsel's Exhibit 6, card of Carlos Gonzalez, as General Counsel's Exhibit 7 a card of Enrique Pellot Reyes, and General Counsel's Exhibit 8, Manuel Sanchez.

(Whereupon, the above described cards were marked as General Counsel's Exhibits 4 through 8 for identification.)

JUDGE JALETTE: Back on the record.

You want to show those cards to counsel?

MR. APPELL: Yes.

(Mr. Appell handing documents to Mr. O'Dwyer.)

Q. (By Mr. Appell) Mr. Pieretti, I show you a card that has been marked as General Counsel's Exhibit 3.

Can you identify that?

(Handing document to witness.) A. This is my card.

Q. Who put in the handwriting on that card? A. I signed.

268 JUDGE JALETTE: Speak up.

A. I sign my name here.

Q. And the date on that card, is that the date you signed

it? A. Yes.

- Q. Where were you when you signed that card? A. Home.
- Q. Is this one of the cards that Tony gave you? A. Yes.
- Q. Was anyone else there when you signed it? A. I was in my room, alone.

MR. APPELL: I offer General Counsel's Exhibit 3 into evidence.

JUDGE JALETTE: Any objection?

MR. PETIT-CLAIR: We have no objection.

JUDGE JALETTE: General Counsel's Exhibit 3 is received in evidence.

(Whereupon, General Counsel's Exhibit 3 was received in evidence.)

Q. (By Mr. Appell) I show you General Counsel's Exhibit 8 for identification.

Did you ever see that before?

(Handing document to witness.) A. It's Manuel Sanchez, this card over there.

Q. Do you know how he came to sign that card?

269 A. He sign.

Q. Did you see him sign? A. No.

MR. PETIT-CLAIR: Objection.

A. I give the cards to him.

JUDGE JALETTE: Objection overruled.

You gave the card to him?

THE WITNESS: Yes.

JUDGE JALETTE: And what happened after that?

THE WITNESS: Then he give it to me as soon as he sign it, so I give it -- I walk away from him, so then after a while he give me the card.

- Q. Where did he give you the card? A. In the shop.
- Q. Where did you give it to him to begin with? A. In the morning when I went to the shop, I give a card to each one, Spanish one was there.
- Q. And what date was that? A. Well, it must be 11th, next day.

I mean 11th -- July 11th -- I mean May 11th, '74.

- Q. Do you know who put in the date 5-10-74, there, whose handwriting that is? A. No.
- Q. All right. A. He give me the card signed, there was --

270 MR. PETIT-CLAIR: Your Honor, may I object.

We don't know anything about the authenticity of this card.

He said it wasn't signed in his presence --

JUDGE JALETTE: It hasn't been offered yet.

You mind objecting when it's offered on the grounds it hasn't been properly authenticated, then I can hear you then.

- Q. (By Mr. Appell) What did you do with this card after Mr. Sanchez gave it to you signed? A. Well, what I did after --
- Q. What did you do with that card? A. I put it together with the other ones, soon I get all of them, I give it to Leroy.
 - Q. Leroy? A. Yes.
 - Q. Is that Leroy Howard? A. Yes.
 - Q. I show you General Counsel's Exhibit 7.

Did you ever see that card before?

(Handing document to witness.) A. This is Enrique Pellot Reyes.

- Q. Did you give him that card? A. I give it to each one, everyone, yes.
 - Q. Did you see Mr. Pellot Reyes sign that card?
- A. Soon as I give the card I walk away from them.
 - Q. Where did you give it to him? A. I give it to him in his car --

JUDGE JALETTE: In his car?

THE WITNESS: This card, inside the shop, inside the factory.

- Q. (By Mr. Appell) When did he give it back to you?

 A. The same day.
 - Q. Is that the card he gave back to you? A. Yes.
- Q. And do you remember the date -- he gave it to you?A. Same day he give it to me.
 - Q. What day was that? A. May 10th.
- Q. I show you General Counsel's Exhibit 6, did you ever see that before?

(Handing document to witness.) A. Carlos
Gonzalez --

- Q. Did you ever give him a card? A. I give a card to all Spanish people.
- Q. I am asking you know about Carlos Gonzalez, did you give him a card? A. I give a card, yes.
 - Q. Did you see him sign the card? A. No.
- Q. Did he ever give you back a card signed? A. Yes.
 - Q. Is that the card? A. That's this one.
 - Q. What did you -- where did he give it back to you?

 A. He fill it up.
 - Q. How long after you gave him the card did he give it to you? A. A minute later.
 - Q. How much? A. About five minutes later.
 - Q. Where did you give him the card? A. In the shop.
 - Q. And where did he give it back to you? A. In the same place.

In the shop.

MR. APPELL: Your Honor, thus far I will offer General Counsel's Exhibit 6 through 8 into evidence.

JUDGE JALETTE: You are not going to examine the witness about the others?

MR. APPELL: I will.

JUDGE JALETTE: Why don't you go ahead.

MR. APPELL: Okay.

- Q. (By Mr. Appell) I show you General Counsel's Exhibit
- 5, did you ever see that before?

(Handing document to witness.) A. Luis Escalera,

yes.

- Q. Who is Luis Escalera? A. He's working there.
- Q. Did you give him that card? A. Yes.
- Q. Do you remember when that was? A. May 10th, '74.
- Q. Where did you give it to him? A. In the shop.

- Q. And did he ever -- did you see him sign it? A. No.
- Q. Did there come -- was there a time when he gave it back to you? A. Yes.
- Q. When did he give it back to you? A. About five, six minutes later.
- Q. And where did he give it back to you? A. In the shop.
 - Q. Was it signed by him when he gave it back to you?
- A. Yes. It was signed.
 - Q. I show you General Counsel's Exhibit 4.(Handing document to witness.) A. Jose Carrion.
- Q. Who is Jose Carrion? A. A guy who was working there.
 - Q. Did you give him that card? A. Yes.
 - Q. Do you remember what date you gave him the card? There's no date on that card.

Do you remember what date?

MR. PETIT-CLAIR: Objection, Your Honor.

He's been leading the witness right along.

JUDGE JALETTE: Objection is overruled.

He is asking what date.

MR. PETIT-CLAIR: He says it's undated.

He knows more about the card --

JUDGE JALETTE: He can look at it.

He's handing it to the witness.

- A. I give it the same day as the other ones.
 - Q. Where did you give that card to Jose Carrion?
- A. In the shop.
 - Q. Did you see him sign it? A. No.
 - Q. Was there a time when he gave it back to you signed?
- A. About five minutes later.

- Q. And what did you do with all these cards after they were signed? A. Put them in my pockets.
- Q. Did you talk to these men when you gave them the cards? A. I explain about the new unions.
 - Q. What did you say? A. I say this is card for new unions -- I explain that this is a new card so we want a new union to represent to us in the shop.
 - Q. When you talked to these men did you talk to them alone or was anyone else there? A. Alone.

MR. APPELL: At this time, Your Honor, I offer General Counsel's Exhibits 4 through 8.

JUDGE JALETTE: Any objection?

MR. PETIT-CLAIR: Yes. A; They have not been authenticated as to the signature, the witness did not see any of them signed in his presence.

B; They have been referred to as, "it," and the same card.

There has been no testimony that he was able to identify these cards as opposed to any other cards he gave out.

C; There has not been a broken chain of custody established with respect to the cards.

And for all of these reasons I move they not be admitted.

JUDGE JALETTE: Objection is overruled.

General Counsel's Exhibits 4 through 8 are received in evidence.

(Whereupon, General Counsel's Exhibits 4 through 8 were received in evidence.)

Q. (By Mr. Appell) Mr. Pieretti, was there a time when Henry Accarino called you to his side and talked to you? A. Yes.

- Q. Do you remember when that was? A. I don't remember the dates.
- Q. Well, was it before or after you signed these cards up? A. It was after.
- Q. Do you remember how long after? A. After Memorial Day.
- Q. About how long after Memorial Day? A. Two days after.

JUDGE JALETTE: Two days after?

THE WITNESS: Two days or one day.

I don't know.

- Q. (By Mr. Appell) And did Henry talk to you? A. Yes.
- Q. Was anyone else there? A. We was alone, both alone.
 - Q. Alone? A. Yes.
 - Q. Where was this? A. In the shop.
 - Q. What did Henry say to you? A. At that time he ask me, so, do you want, everybody in the place want a new union to represent you.

I say yes.

So he say I don't want no problem with no unions, but he no names which one, because they give me a lot of problems, and I can fire everyone out.

- Q. Did he say anything else? A. Well, say a few words, but I couldn't remember.
- Q. Do you remember what he said about the union that was already in the slop? A. Oh, yes.

So he say because the union we have here have to stay here.

JUDGE JALETTE: Did he speak to you in English?

THE WITNESS: In English.

- Q. (By Mr. Appell) Now, you said that the -- you never got a complaint -- they never said anything about your work until about in May? A. Yes.
 - Q. When was the first time you got a complaint, what day, do you remember? A. I don't remember.
 - Q. Well, was -- A. I know it was after Memorial Day.
 - Q. It was after Memorial Day? A. Yes.
 - Q. Do you know how long after Memorial Day? A. I think -- it was Monday, Tuesday we went back to work, I remember.
 - Q. It was Tuesday? A. Tuesday.
 - Q. Did Henry Accarino talk to you that day? A. Yes.
 - Q. What did Henry -- where did Henry talk to you?

 A. Well, he told me -- I don't know if it's Tuesday or Wednesday,
 I know one of those days.

So that's the time he call me up in the shop, he asked me what I told you before.

Then he put me to work on one machine I never work before.

- Q. When did he do that, after he talked to you or before?
 A. After he talked to me.
- Q. Was it the same day? A. I think it's one day after. I couldn't remember.
 - Q. Now, you say you never worked on this machine. What kind of machine was it? A. Spot welder.
 - Q. Did you know how to do it?

Did you know how to use this machine? A. I know how press the pedals down, but to make the operator -- I mean to work -- make the work, I don't know.

Q. Who put you on that new machine? A. Henry.

Q. And what did Henry say to you when you went to work on that machine, do you remember? A. He told me to work on that machine, he walk away.

JUDGE JALETTE: Say that again.

THE WITNESS: He put me on the machine, he say work, operate on the machine, then he walk away.

- Q. (By Mr. Appell) Now, after that Henry -- did Henry talk to you again? A. Well, he come back about half hour, one hour later, told me I don't know how to do the job.
- Q. What did you say, if anything? A. I say you got to show me, because I am new on this job, I never did it before.
- Q. Have you ever done this machine in the three years -- two and a half years you were working there? A. No.
 - Q. Well, when you said you have to show me, did Henry say anything? A. No.

He told me you know how to do this job.

I say no, this is the first time I am operating this machine, you got to show me.

So he don't want to show me.

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Then I asked somebody was beside me because he don't want either.

- Q. You say you asked someone beside you? A. Yes.
- Q. What is that? A. I couldn't remember the names.
- Q. Well, did Henry say anything about that? A. He told me don't ask to nobody.
- Q. When did he tell you not to ask anyone? A. I don't know -- when I told him.
- Q. When did Henry tell you not to ask anyone else about the work? A. At the same time I ask him to show me, he don't know to, but he walk around, you know, stay around.

Then a guy was beside me, I ask him, then he saw me ask the other guy, he come, tell me, don't ask to nobody.

- Q. Now, did you learn finally how to use this machine?

 A. Well, then myself I learn how to operate because I look at the other guys, how they work it, then I learn.
- Q. Now, were you ever taken off the machine and put back on what you were doing before? A. Next day, 12 o'clock, I was doing right, then he come to me, saying you don't know how to do the job, I got to put you back on your own job.
 - Q. Who said that? A. Henry Accarino.
- Q. (By Mr. Appell) After this, when you were put back to your machine, did anyone complain about your work up until the day you were fired? A. No more.
- Q. Now, do you remember after that, if Henry called you to his office? A. Yes.
 - Q. Do you remember when that was? A. Two or three days after Memorial Day.
 - Q. Was it the same day as he put on back on the other machine or was it another day?

If you remember? A. I couldn't remember.

- Q. Excuse me? A. I couldn't remember.
- Q. Did Henry talk to you in his office? A. Yes.
- Q. Was anyone else in the office? A. No. Him and me.
- Q. What time was that? A. After work, about 4:30.
- Q. What did Henry say to you at that time? A. Henry told me -- ask me what happens to me.

I say nothing.

JUDGE JALETTE: Speak up.

A. Henry, he asked to me what happens.

And I answer back, I say nothing happens, nothing wrong with me.

283 He then he said did you like the job, did you no like work any more here.

I say, well, I am working here, I like it.

He say -- then he told me, do you need money.

I told him that's what I am working because I need money.

Then he asked me again do you need money.

And I answer him the same thing back as -- that's why I am working because I need money.

Q. All right.

JUDGE JALETTE: Is that all?

Is that the whole conversation?

A. No.

He start to give me long history, but --

JUDGE JALETTE: He started to give you what?

THE WITNESS: Long history, you know, convincing me if I need money, and -- as I told him that's why I am working because I need money.

Oh, yes, and then he pretend to me to ask him for lay off.

Q. (By Mr. Appell) He want? A. He pretend to ask him I want lay off.

You understand? He want to me to say I want lay off.

Q. He told you this? A. Yes. No, no.

He don't told me, you want lay off.

He no told me I want you to tell me I want lay off, no.

He pretend --

MR. PETIT-CLAIR: Objection.

JUDGE JALETTE: Objection overruled.

Q. (By Mr. Appell) What did Henry say, as best you remember?

A. He say do you want -- you want to ask Memorial

Day off because I couldn't give you lay off because I give you lay off I am going to get problems with the unions, but he no name no unions, which one.

- Q. What did you say to him when he said that? A. What?
- Q. What did you say to him? A. I say no, I don't want to.

JUDGE JALETTE: You said you don't want?
THE WITNESS: I don't want to ask you for lay off.

- Q. (By Mr. Appell) Do you remember a time when Mr. Nuchow came to the shop and held meetings -- held a meeting? A. Yes.
- Q. Do you remember a time when he held a vote?A. After Memorial Day. Tuesday.
 - Q. And how many meetings were there that day?
 - A. One in the morning, one in the afternoon.
- Q. What happened at the morning meeting? A. The morning meeting, he ask give opportunity to everyone -- asked everyone to give opportunity to get a new contract.

I spoke to the Spanish people.

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I say don't give opportunity now because he's going to get opportunity soon the election come.

Q. Now, what happened in the afternoon meeting?

A. Well, in the afternoon he call everybody in the shop inside the shop, and the shipping departments.

He ask to who going to vote for him or against him. Some people they raise up their hands.

- Q. Did you raise your hand? A. No.
- Q. What did they have to raise their hand -- what did this mean? A. To vote for him, that's what he said.
- Q. Now, do you remember a day when you came down to the Labor Board to give a statement? A. Well, I remember I came here, but I don't know the date.

- Q. Do you remember what month it was? A. No. I can't.
- Q. Do you remember if it was in June or July? A. I think it was in June something.
 - Q. Who did you come down here with? A. We came down with Leroy, Vilcius, and me.
 - Q. With whom did you come, the three of you, anyone else? A. Tony Schifano picked me up on the corner West 15th Street and Neptune Avenue.
 - Q. What time did he pick you up? A. In the morning.
 - Q. How far from the shop? A. It was about a block -- one block away.
 - Q. Was that a work day? A. Yes.
 - Q. Had you requested time off from your boss? A. Yes.
 - Q. Whom had you spoken to? A. I spoke to Henry Accarino.

I think I let know Mario Accarino too.

- Q. Mario Accarino also? A. Yes.
- Q. What did you say to Henry? A. I have to be off because I have to go someplace.
 - Q. And what did he say to you? A. Okay.
- Q. Was that the same day that you came, or was that the day before? A. Same day I came here.
 - Q. And did you come to the Labor Board and give a statement that day? A. Yes.
 - Q. The next day, did anyone talk to you at work?

 A. Next day, about ten o'clock in the morning Mario Accarino seen -- told me --
 - Q. Where did he talk to you? A. In the shop.
 - Q. Was anyone else there? A. No.

- Q. What did Mario say to you? A. He told me next time you are going to ask me for day off I going to fire off because I know where you was, but he didn't say anything else.
 - Q. Did you say anything to him? A. No. I walk away.

He didn't say nothing.

- Q. Now, after you were in this hearing at the Board, was there a time when you asked Henry Accarino for time off for something else? A. I mean tell me again?
 - Q. Well, did you ever ask for time off to go to a convention? A. Oh, yes.
 - Q. Do you remember when you asked for that?

 A. On July 22nd.
 - Q. And whom did you talk to? A. I spoke to Henry Accarino.
 - Q. Henry? A. Henry.
 - Q. Anyone else? A. I think Mario too. I don't remember.
 - Q. Where did you speak to Henry? A. In the shop.
- Q. Do you remember what time of day it was? A. About -- this time I remember very good, three o'clock in the afternoon.
 - Q. What did you say to Henry? A. I tell him I am going to take the day off because we have a religion convention.
 - Q. All right. A. I need this two day off, it was Thursday and Friday.
 - Q. You take two days after? A. Two days after.
 - Q. What days were they? A. Thursday and Friday.
 - Q. What did Henry tell you when you told him this? A. Okay.

- Q. Was anyone else there when you spoke to Henry?A. It was -- there was around Michael Ortiz, Julio Valdez.
- Q. Did you finish your answer? A. There was around, the machine the work, but I don't know they hear me.

They saw me talking to him, but -- I don't know if they know about it.

I was asking for two days off because they was working the machines, they made noise so --

- Q. So u don't know if they heard you? A. That's right.
- Q. Now, did you go to a convention that Thursday andFriday? A. Yes.
 - Q. Is that July 25th and 26th? A. Yes.
 - Q. What convention was that? A. Jehovah's Witness.
 - Q. Jehovah's Witness? A. Yes.
- Q. Now, did you go to work on Monday, July 29th?

 A. Yes.
- Q. What time did you get there? A. Early in the morning.
- Q. What time is that? A. About between -- about 20 minutes to eight o'clock.
 - Q. What are your hours of work, by the way? A. What?
- Q. What were your hours of -- hours that you worked each day?

What time did you come to work regularly, what time did you leave? A. What time did I come to the shop?

- Q. Generally, when you worked? A. 20 minutes to eight, sometime --
- JUDGE JALETTE: When were you supposed to start work?

 THE WITNESS: Eight o'clock.

 JUDGE JALETTE: To what time?

THE WITNESS: 4:30.

Q. (By Mr. Appell) What time did you go to work on Monday, July 29th? A. I punch my card, then I went to my locker to change my clothes.

Henry was there.

Then he told me I am fired because I ask for day off, only one -- he told me you ask me for one day, you took two.

I said no, I ask you for two days because every year you give me that day, that two days after.

- Q. Had he given you those -- these days before?

 A. Yes.
 - Q. How many years? A. Two years before.
- Q. Two years before? A. I mean every years. Every years.
 - Q. Two days each time? A. Yes.
 - Q. What else did Henry say and what did you say?
- A. Well, he give me -- he give me the check.

My pay. He say you fired.

Then he ask me -- I ask why.

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He say because you ask me for one day off and you took two.

I said, no, Henry, I ask you for two days, not one.

So he say no, no, you ask me for one, you get your check.

So I told him, I say Henry, every religion, they celebrate their days, Holy Days.

My own, same thing, I suppose to take days off because it's a religious Holy Day.

He say I don't care.

That's what he told me.

He give me the check. Then --

Q. Did -- yes. A. He told me I don't care.

Then I took the checks, I walk out, then I walk on the sidewalk and Nuchow come in his care the same day I walk out.

He call me, I say I know you got laid off, you fired, I know you, come up to the office.

Then we went to the office.

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So he ask Henry -- Nuchow ask Henry why I got off.

Then Henry change, he said the truth, he said because he make a lot of mistakes.

And I told Nuchow, I say, no. He give me lay off because I took two days off, and I told him I had to have two days off.

Then he say no, he made a lot of mistakes. And he changed his mind.

- Q. Did you make a lot of mistakes? A. On the new machine where he put me to work, yes.
- Q. How many mistakes did you make there? A. I damage about 15 or 20 pieces.
- Q. At the time you were taken off that new machine had you gotten the understanding of the machine, did you know how to use it then? A. Yes.
- Q. Were you still making mistakes when he took you off? A. No.
- Q. Did you make any mistakes when you were put back at your old job? A. No.
- Q. Did the company ever complain before that you had made mistakes, aside from the new machine? A. Never have a complaint about mistakes.
- Q. When did Nuchow come up to talk with Henry, did the company put you back to work then? A. No, Henry, he no want me.

He told, this guy, he's giving me a lot of headache, he got me up to the nose.

And then Nuchow, he told Henry, this guy ask you for two days off, you can't give him lay off for that because that's discrimination of the law.

Henry say what law.

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And Nuchow didn't say nothing.

So then they finish the talk and then I walk out. And I was with Nuchow, and Nuchow say when I was out in the factory, he say he is going to help me.

I said well, I am a member of your union, if you want to help me, that's depend from you.

- Q. While you worked with the company, did you ever teach new workers how to do work? A. Yes.
 - Q. How often did this take place?

How much did you do this? A. Well, there were lot of times new people, they came, and they put me -- show the job.

Q. When was the last time you did that? A. I couldn't remember.

But after Memorial Day he don't put me to show anybody else. It was before that.

- Q. He stopped doing it after Memorial Day? A. Yes.
- Q. About how many men worked in the shop while you worked there in May, June, July, how many people were there? A. About 30, sometimes 35.
 - Q. Did all of them know how to speak English? A. No. Some, they speak English.
 - Q. How much time did Henry spend in the shop itself?

 How much time? A. Well, he's in the shop all day around.
 - Q. How about Mario? A. Mario is in the office. Sometime he come down too.

But most of this -- of his time is spent in the office.

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CROSS EXAMINATION

Q. (By Mr. Petit-Clair) You realize you're still under oath, Mr. Pieretti.

Mr. Pieretti, you testified on direct examination that you gave in addition to the cards which have been introduced into evidence, that you gave out cards to all of the Spanish-speaking workers at General Iron, is that true? A. Most of them.

Q. Most of them.

And about how many people is that? A. About 13 people.

- Q. Pardon me? A. About 13, 14, 15, something like that, about.
 - Q. About 14 or 15.

JUDGE JALETTE: About 13, I thought he said.

- Q. About 13? A. Yes.
- Q. 14? A. Yes.
- Q. All right.

Do you remember the names of the people that you gave cards to? A. Some of them, yes.

Q. (By Mr. Petit-Clair) Now, who were the other people you gave cards to? A. I know the name of some of the workers, not all.

JUDGE JALETTE: The best that you can, besides the ones that you identified the cards, are there any other Spanish-speaking people?

THE WITNESS: There was a few more.

JUDGE JALETTE: Can you remember some names?

THE WITNESS: No.

Q. (By Mr. Petit-Clair) Now, if you saw the cards, would that help you remember?

If you saw the cards would that help you remember?

A. I don't know the names.

Q. If you saw the cards of the people, the other people in addition to that, would that help you remember their names? A. All right.

MR. APPELL: In accordance with Your Honor's direction I will produce the cards.

I, of course, do not know whether each of these signatures was procured by Mr. Pieretti or somebody else.

Do you want me to turn over all the cards I have?

JUDGE JALETTE: Yes.

MR. APPELL: May I recite the names and dates into the record, Your Honor?

JUDGE JALETTE: Yes.

MR. APPELL: Herman Pagan, 5-10-74, David Murchison, 5-9-74, Hector Cardona, undated.

Leroy Howard, 5-74, Julion Chinga, undated, Gildo Vargas, or O.S., I am not sure, I believe, A.S., undated. Richard S. Brown, undated. William Cheatham, undated. Vincente Hernandez, Roman, 5-10-74.

MR. PETIT-CLAIR: That last name is Hernandez Roman? MR. APPELL: Yes.

Michael Oritz, 5-10-74. Luis Accevedo, 5-10-74. Michael Johnson, 5-10-74.

Dominick DiMambro, 5-10-74. Louis Cardona, 5-10-74. Raymond Usher, 5-10-74.

307 Q. (By Mr. Petit-Clair) Now, Mr. Pieretti, I have these cards.

I show you now a card signed by a Mr. Herman Pagan.

Did you have that card signed?

(Handing document to witness.) A. No.

Q. I show you a card of a Mr. Raymond Usher.

Did you have that card signed?

(Handing document to witness.) A. No.

JUDGE JALETTE: Answer out loud.

308 A. No.

Q. I show you a card of a Mr. Louis Cardona.

Did you have that card signed?

(Handing document to witness.) A. This one, yes.

Q. I show you a card of I believe it's Mr. DiMambro.

Did you have that card signed?

(Handing document to witness.) A. I don't know.

Q. You don't recall?

Mr. Michael Johnson?

(Handing document to witness.) A. No.

Q. Mr. Luis Accevedo?

(Handing document to witness.) A. I think not this

one.

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Q. You think not that one.

Mr. Michael Ortiz?

(Handing document to witness.) A. Yes.

Q. Mr. Hernandez Roman?

(Handing document to witness.) A. Yes.

Q. A Mr. William Cheatham?

(Handing document to witness.) A. No.

Q. Mr. Richard Brown?

(Handing document to witness.) A. No.

- Q. Gildo Vargas?(Handing document to witness.) A. No.
- Q. Mr. Julius Chinga?(Handing document to witness.) A. No.
- Q. Mr. -- well, that's Mr. Howard, did you have him sign his card? A. No.
- Q. Mr. Hector Cardona? A. Let me ask you something, you ask me if I give this card to them?
- Q. (By Mr. Petit-Clair) If I told you it was the 7th of August, would that refresh your recollection? A. Maybe, I don't know.
- Q. Do you recall it was in sometime in August?

 I show you now a statement? Is this the statement you gave?

 (Handing document to witness.) A. Yes. Yes, it is.
 - Q. And you initialed -- those are your initials in the margin? A. Yes.
 - Q. Well, since I am not fluent in Spanish, I am going to question you from the English translation which Mr. Appell assures me is the same as what is written in Spanish.

Now, do you recall that when you gave this statement you told the agent from the NLRB that you gave out cards for the union over a period of two or three days?

Do you recall that?

And that you said that no boss or supervisor ever saw you throughout that whole period giving out the cards? A. Nobody.

No bosses, any bosses.

- Q. And no supervisors saw you? A. No.
- Q. And that no bosses or supervisors ever saw you talking to anybody from 455? A. No.

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- Q. You remember saying that? A. Yes.
- Q. And that's true, isn't it? A. Nobody, not the boss.
- Q. And that was true even up until the time you were fired, they never saw you talking to Mr. Schifano, they never saw you give out any union cards? A. Nobody saw me when I give the cards.
- Q. (By Mr. Petit-Clair) Nobody from the company saw you with Mr. Schifano, the bosses? A. Because all we spent on Neptune Avenue, West 15th, some Stillwell Avenue.

This is not far from this -- long block from the place.

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- Q. So you were very careful to meet with Mr. Schifano far away from the plant? A. Yes. Sure.
- Q. And you made sure that nobody saw you? A. If they see me, I didn't saw them.
- Q. And do you recall in your statement that you said that on the day after Memorial Day Mr. Henry Accarino put you to work on a new machine? A. After Memorial Day, yes.
- $\ensuremath{\mathsf{Q}}.$ What kind of machine was that? A. It's a spot welding machine.
- Q. And you had been working for Mr. Accarino from 1971, right? A. Almost three years I work.
 - Q. Almost three years? A. Yes.
 - Q. And what was your job? A. Spot welder.
- Q. You were a spot welder? A. And I did power press sometimes.
 - Q. But you did spot welding before? A. Yes. Yes.
- Q. As a matter of fact, that was what you did most of the time? A. That's right, spot welding.

- Q. And then he put you a new machine -- new spot welding machine? A. That's right.
- Q. What was the difference between the new spot welding machine and the one you had been working on? A. Well, it's much difficult and dangerous.

JUDGE JALETTE: And what?

- Q. Pardon me? A. And dangerous.
- Q. It was a dangerous machine? A. Yes.

Because it's a long piece like this, and I put two pieces metal very close, then the pointer come down just, and the weld, but the finger is close like this, very close where the point.

- Q. You felt it was dangerous? A. Sure.I got to be careful.
- Q. Were you frightened of that machine, Mr. Pieretti?
 A. Yes.
- Q. Were you frightened of that machine? A. Afraid to get hurt.
- Q. And did that affect your work because you were afraid to get hurt? A. No.

MR. APPELL: Objection.

A. I need --

JUDGE JALETTE: Objection overruled.

- A. I need practice because all the machines are dangerous, but experience man never get hurt, they got practice on that machine.
- Q. As a matter of fact, Mr. Pieretti, it was a dangerous machine you felt, right, and you felt all the spot welding machines were dangerous, didn't you? A. Sure.

The spot welding, they had to be careful because sometimes the flash could blow up.

Q. The arch you mean from the welder? A. I mean the flash.

- Q. When the welder would come down, the flash -- A. Yes.
- Q. And you were frightened of all these machines?A. Because maybe I work three years I got practice, you see.
- Q. But you had to be very careful? A. Every job you have to be careful or you get hurt.
- Q. And as a matter of fact, Mr. Pieretti, the day that Mr. Accarino called you in the office was the day that you had the trouble with the new machine, isn't it, after work that day? A. Between those days.
 - Q. Either that day or the next day, right? A. In between those days.
 - Q. And you were alone with Mr. Accarino, weren't you -- Henry? A. Yes.
 - Q. And when you were in his office, didn't he say to you -tell me if I am wrong -- Jose, what's wrong, you got family
 troubles, something wrong, did he say that to you? A. No.
 - Q. Did he ask you if there's anything wrong? A. What's wrong with me, I say nothing.
 - Q. He said what's wrong with you Jose? A. Nothing.
 - Q. And you said nothing? A. Nothing.
 - Q. And didn't he say to you do you want to keep working or do you want to go on unemployment, isn't that what he said to you?

 A. He said me he wants to ask him for lay off.
 - Q. No, didn't he say to you do you want me to lay you off?
- A. No. He wants ask him -- he say do you want to ask me for lay off.

I wait until you give me a lay off.

Q. When you were there talking to Mr. Accarino -- he said do you want to ask me for a lay off Jose, you said, no, I will wait until you lay me off? A. Sure.

Q. As a matter of fact, didn't he say to you, Jose, what's wrong, and didn't you tell him that the machine was dangerous and you were afraid of it? A. No.

I told him I got to be careful on the machine because the fingers are too close.

JUDGE JALETTE: The question was, what did you tell Mr. Accarino about the machine in the office?

THE WITNESS: In the office?

JUDGE JALETTE: Yes.

THE WITNESS: Well, there was a mchine -- I said you got to -- I told him, I damage pieces because you don't show me, you no give me practice in the beginning.

You just put me on the machine, I work -- and walk away from me.

That's what I told him.

Q. And didn't you tell Mr. Accarino at that time that you were frightened of the machine you had to be careful, and that's -- A. I told him that's a machine everyone had to be careful because the finger is close -- is very close and can get hurt very easy.

So I got to -- you are suppose to give me time and show me how to do the job but you don't did that.

- Q. And as a matter of fact, you testified before that you had been there long enough and you had a lot of experience so that you have taught new men how to spot weld, didn't you? A. Yes.
- Q. But on this particular occasion you said to him that the reason you were runing the pieces is because you had to be careful, right, extra careful? A. Be careful.
 - Q. And you also said to him at that time, did you not, that you were frightened of the machine? A. Not frightened.

Once I got experience, what --

Q. You just told me a minute ago it was dangerous - A. Sure it's dangerous.

Every job there is dangerous.

Q. Now, was it before that day or after that day that you went to the convention for the Jehovah's Witnesses?

A. After.

Q. After that day? A. Wait, he called me in the office twice -- no -- twice.

I went up to the office because the office is on the second floor, twice.

Q. Twice for what reason?

Once he called you in to talk to you about the machine and your work, right? A. And the other one I get laid off.

- Q. When he laid you off he called you up? A. Yes.
- Q. What I am saying when you went to the convention was that before or after he talked to you about the machine and asked you what was wrong? A. That was after.
 - Q. That was after that.

And you testified, did you not, that you asked his permission to go? A. I asked for permission to go.

Q. When you came back that Monday, what did Mr. Accarino say to you? A. I found out I was fired.

He give me lay off papers.

- Q. What did he say to you? A. Because I ask for one day -- I ask for one day and I took two days, that's what he told me.
- Q. Now, the man that was operating the machine next to you that you said you were going to ask about how you did this job,

this spot welding, was he at the company longer or shorter time than you? A. I ask to Michael Ortiz, he was longer than me.

- Q. And he had been there even longer than you?

 A. About one month.
- Q. So that both you and Ortiz had about the same amount of experience, right? A. Almost. Almost about.
 - Q. And Mr. Accarino forbid you to ask Ortiz? A. Yes. I tried to ask him, but he said you don't have to ask nobody.
- Q. And he didn't want to talk to you about it? A. That's right.

Q. No.

Mr. Ortiz -- Pardon me, Mr. Pieretti, let me make my question more clear.

You yourself were a spot welder and you worked on different kinds of spot welding machines, right?

Was there ever a time before this time with this machine where you were working on a dangerous spot welding -- spot welder and that you had work that was ruined? A. If I have problems or something?

- Q. Yes. A. No.
- Q. You never had problems before that day? A. No.
- Q. Did there ever come a time when Mr. Accarino said to you, Jose, I have got new men here and they get more work done than you?

Did he ever say that to you?

Or words like that? A. At that time, yes.

Q. And did --

JUDGE JALETTE: What was your answer, yes, he said that to you?

THE WITNESS: Wait a minute.

In the new machines where he put me to work, he compare me to -- to the other guys. The other guys has experience, I didn't have nothing, so how can I give out the same amount as the other guy.

It was new machine.

Q. Mr. Pieretti, did he say to you that we have new men -newer men than you and they get more work done? A. There was
no -- but --

JUDGE JALETTE: Repeat your answer.

- A. He's new in the shop, like Hernandez Roman, but first they came to work in the shop, he put on the machines so he got practice and experience.
- Q. What you are saying to me, as I understand you, Mr. Pieretti, and you correct me if I am wrong, is that Mr. Accarino did compare you to the newer men? A. Yes.
- Q. And unfavorably, he said that you didn't get as much work done? A. Right.
 - Q. But you say that the reason for that was that even though they were newer than you they had more experience on that particular spot welder? A. Because that's the first job they men came to be here -- work in the shop.
 - Q. But you did do actually less work than the newer men?

 A. The machine was new for me because I never --
 - Q. Did you ruin a lot of pieces getting used to the machine?
 - A. About 15 between -- or between 20 damaged.
 - Q. All right.

Now, when you got fired Mr. Accarino -- told you that he was firing you because of your work and because you took time off, right? A. Yes, time off.

- Q. And you said before that you always took two days a year for religious observance to go to the Witnesses' Convention, right? A. That's right.
- Q. Can you tell what days you took off the year before in 1973? A. The same days.
- Q. The same days? A. I think -- I think, I don't know -- sure.
- Q. What days were that, the -- A. The last time I took two days off was July 25th and 26th.

JUDGE JALETTE: That's this year?

THE WITNESS: This year, '74.

JUDGE JALETTE: What about 1973?

THE WITNESS: I think it's a'most the same time.

I think it was 27th, 28th, something like that.

- Q. (By Mr. Petit-Clair) Does it always happen in the last week in July? A. In July, always in July, the month of July.
 - Q. Where do they hold these conventions? A. In Jersey
- Q. Now, Mr. Pieretti, if I told you that in 1973 that you didn't have any time off in July for the convention, would I be right?

 A. I have. Always I take off those days.
 - Q. Were you paid when you took time off from work?
- A. If I get paid for those days?
- 332 JUDGE JALETTE: Yes.

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- Q. When you took a day off, did you get paid? A. No.
- Q. You never got paid for time off, did you?

Now, if I told you you had four weeks pay for every week in July in 1973 -- A. In July -- sometime the convention take place -- I mean the date July 29th -- this is four day, and then it takes some

days of August, but sometimes before that, 25th or 26th, and then Saturday and Sunday.

- Q. But it's always in July? A. Mostly in July.
- Q. All right.

Now, is it ever in August? A. Sometime they take two or one days of August.

- Q. Now, if I told you that you got paid for every week in August, would that refresh your recollection? A. Everytime I take those days off, everytime.
- Q. But you can never remember -- you can never remember getting paid for days you took off while you were working for General Iron? A. I never get -- I can never get paid for those days off.
 - Q. Okay.
- Now, -- and in 1972 you took two days off again for the convention? A. Every years.
 - Q. Since 1971? A. I belong to the Jehovah's Witness 15 years, so every years I take those days off where I am working.
 - Q. So that means that you took off in the summer of '72, in '73 and '74? A. Every years.
- Q. And Mr. Accarino -- and he said to you, did he not -Nuchow -- as a matter of fact, that day when he fired you,
 he never mentioned union at all, did he? A. No.
 - Q. He never talked to you about the union? A. Not about the union.

Wait a minute.

Q. On the day he fired you he never discussed union?A. No.

Q. When you were coming out of the plant, and there was Mr. Nuchow, and he knew you had been fired? A. He told me.

- Q. He said come on upstairs? A. That's right.
- Q. Now, Mr. Pieretti, when Nuchow, he took you upstairs now to see Accarino? A. Yes.
- Q. This is only a few minutes after he gave you the lay off slips? A. Right.
- Q. And you went into the office, and did Nuchow ask Accarino why he fired you? A. Yes.
- Q. What did Accarino say to him? A. Then Accarino changed his mind. Then he says because he makes a lot of mistakes.

And then I told him no, you give me lay off because I ask for two days off.

Q. That's what you told Accarino? A. Yes.

And then he say I ask for one, and you say I took two days off.

Q. Now, during the time that -- strike that.

So there you were with Nuchow and Accarino and you said to Accarino that you fired me for taking time off? A. That's right.

- Q. And he said not, I fired you because of your work?
- A. Which is upstairs in the office because I made a lot of mistakes.
- Q. But he had told you about the mistakes the day before you took the two days off, right? A. The mistakes was in May.
 - Q. Oh, pardon me.

The mistakes were all in May that he told you about?

- A. The mistakes was after Memorial Day. On the new machine.

 I made mistakes on new machine.
- Q. That was a month before he fired you? A. That's right.

- Q. And he told you about mistakes again? A. He mentioned about mistakes again.
 - Q. And he mentioned mistakes to Mr. Nuchow?

 What did Nuchow say to him? A. Give him a chance.

 But he said not he got me up to the nose.
 - Q. He said I am up to here with him? A. Yes.
 - Q. And he pointed to his nose? A. Yes.
 - Q. And he said he's had enough of you? A. Yes.
- 338 Q. So you went back downstairs with Nuchow? A. I went out with Nuchow.

Outside Nuchow said he was going to help.

I said I am a member of union, if you want to help me, that's all right.

- Q. As a matter of fact, Mr. Nuchow did do something about it, didn't he? A. He want to do but he never did nothing.
 - Q. Didn't you get a letter from him? A. Yes, I got a letter from him.

He want to represent me.

- Q. Right. And isn't it a fact that you never told any of the employees in your shop to either vote for 840 or 455?

 A. That's their decision.
 - Q. When you talked to the employees about the union, you didn't tell them to vote for 455? A. No.
- Q. And you didn't tell them to vote for 840? A. I told them it was their own decision.
 - Q. You told them it was their own decision? A. That's right.

- Q. And that you subsequently were notified by Mr. Nuchow that he wanted you to come to an arbitration, weren't you? A. He send me a letter, call me up by phone.
- Q. And you got that letter, didn't you? A. He call me up by phone first and I got the letter.
- Q. He talked to you by telephone and he gave you a letter? A. Yes.
- Q. And he told you where to come, right? A. I think it was right here in this place.
 - Q. And you didn't go? A. No.

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REDIRECT EXAMINATION

JUDGE JALETTE: Let me see if I can make out a one shot stipulation here.

Do I understand that we are stipulating as follows, gentlemen, that in the year 1972 for the week ending August 2nd Mr. Pieretti worked only 24 hours?

MR. PETIT-CLAIR: Yes.

JUDGE JALETTE: And you further stipulate that in the year 1973 the Respondent's records indicate that in no week between the period from July 11th through August 29th, did he work less than 32 hours?

MR. PETIT-CLAIR: Yes, Your Honor.

JUDGE JALETTE: However, he did work a week of 24 hours in the week ending June 27th?

MR. APPELL: Yes.

MR. PETIT-CLAIR: I would object to that stipulation because it's not relevant, Your Honor.

He has testified it was in July.

JUDGE JALETTE: I can see it relevance.

Will you so stipulate?

MR. PETIT-CLAIR: We will stipulate it.

- Q. Mr. Pieretti, what kind of pieces were ruined when you were working on the new machine? A. Pieces for making hanger pants.
 - Q. Pants hangers? A. Pants hangers.
 - Q. (By Judge Jalette) Mr. Pieretti, that machine that Mr. Accarino assigned you to that you had never worked on before, how long had that machine been in the factory? A. About two years.
 - Q. How many machines like it are there? A. How many other machines?
- Q. Like that very one, the same as the one he put you on that day, how many they have just like that? A. Three machines.
 - Q. Does each machine have a regular operator? A. They got one operator.
 - Q. The same one everyday? A. Sometimes they use three, sometimes two, sometimes one.
 - Q. On the day that Mr. Accarino assigned you, they were using how many? A. All three, they use me and one.
 - Q. They used you and one? A. Yes.
 - Q. Was somebody absent from work?

Was somebody sick?

Did somebody quit? A. I don't know.

Just boss put me there. I don't know the reason.

- Q. And in two years you had never been put on that machine? A. No.
- Q. Was that machine much different from the machine you regularly used? A. It's not different, it's not too, different.

Only is dangerous, that's all.

- Q. Now, you testified you received a telephone call from Mr. Nuchow after you were fired about helping you, is that correct? A. Yes.
 - Q. Now, what did you tell him when he called you?

 A. He want to represent to me my case.

And I told him, I say I don't want him to represent to me.

- Q. And that was all? A. Yes.
- Q. You said you got a letter? A. I got a call then I got a letter.
- Q. Do you have the letter with you? A. I got it home.
 I got two letters from him, I think.
 - Q. You never talked to Mr. Nuchow after that? A. No.
 - Q. You did not go to a hearing anywhere about your discharge? A. No.

JUDGE JALETTE: Anything?

MR. PETIT-CLAIR: Yes, Your Honor.

RECROSS EXAMINATION

- Q. (By Mr. Petit-Clair) You testified, Mr. Pieretti, did you not, that the machine essentially the only difference between the machine that Mr. Accarino put you on that one day and the machine which you operated previously was your feeling that it was more dangerous?

 A. Dangerous.
 - Q. But it was basically the same kind of machine? A. Yes.

But it's dangerous because the nails of the fingers is very close.

370 Q. (By Mr. Petit-Clair) Mr. Pieretti, you were fired in July.

On the day you were fired Mr. Nuchow said he was going to help you? A. Yes.

- Q. And then after that time he called you up on the telephone?A. Right.
 - Q. And then he sent you two letters? A. Right.
- Q. And did he tell you at any time that they had grievances going about your discharge? A. I don't understand what that means.
- Q. That they were complaining about your discharge. Local 840, the union? A. I don't understand so well.
 - Q. Okay.

Let me approach it from a new angle.

Isn't it true that you told an agent of the -- from the Board the following, that you never told anyone that you didn't want Local 840 to represent you with respect to your discharge by Mr. Accarino?

A. When you say to anyone, to who do you want to --

- Q. Mr. Nuchow said he was going to help you -- A. Yes. But I was off of the place. I was home.
- Q. But you didn't tell Mr. Nuchow to stop and don't do anything for me, did you? A. That time he call me by phone?
- 372 Q. Right? A. I told him I don't need you.
 - Q. When was that time? A. I couldn't remember.
 - Q. Well, as a matter of fact -- A. That was after I get laid off, after.
 - Q. I realize that.

This is after the lay off. And as a matter of fact, wasn't it until you got the letter saying to come to the hearing on August 5th, that it

wasn't until that time that you decided that you wanted Mr. Nuchow to represent you? A. I didn't come here.

Q. I know you didn't come.

But as a matter of fact, it was only at that time that you made up your mind that you didn't want him to represent you? A. At that time.

- Q. And that was about the time that the hearing was suppose to be held? A. The hearing.
- Q. And up until that time you hadn't expressed one way or the other any view about their helping you? A. Nuchow?
- Q. Yes. A. I told him by phone I don't want him represent me.
- Q. (By Mr. Petit-Clair) Mr. Pieretti, do you recall giving a statement?

(To the witness through interpreter)

A. Here, yes.

- Q. On August 7th to an agent at the Board? A. Here, yes.
- Q. And at that time you swore it was a true statement?
 A. Yes.
- Q. I am going to read you the following paragraph and you advise me as to whether you can recall that statement? A. Okay.
 - Q. On or about August 1st Nuchow called me and told me that he was going to represent me and he told me to come to 16 Court Street on Monday, August 5th.

I said that I was going to come.

Nuchow also sent me a letter saying the same thing. A. I said on the phone I didn't want him to represent me.

Later he sent me a letter.

What more do you want to know?

Q. I want to know whether you were telling the truth when you said that you told Nuchow that you were going to come in this statement of August the 7th? A. I told him I was going to come, well, if I said it I don't remember.

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WILLIAM NUCHOW

DIRECT EXAMINATION

Q. (By Mr. O'Dwyer) Mr. Nuchow, will you tell me your occupation?

A. Union official.

JUDGE JALETTE: Speak up.

Did you give your name and address to the Reporter?

THE WITNESS: No.

JUDGE JALETTE: Would you do that, please?

THE WITNESS: William Nuchow, 180, excuse me, 280 9th Avenue, New York City.

- Q. What union are you an official of? A. Local 840, International Brotherhood of Teamsters.
- 404 Q. And what is your title with Local 840. A. Secretary-treasurer.
 - Q. And up to sometime in October of this year did you represent the workers at General Iron Corporation? A. I did, sir.
- Q. In the month of August did you come to the Labor Board here? A. Yes.
 - Q. Why did you come to the Labor Board here?

MR. APPELL: Objection.

JUDGE JALETTE: Are we getting to the charge?

We have stipulated that a charge was filed.

MR. O'DWYER: All right.

JUDGE JALETTE: I am taking official notice of the fact that it was filed.

MR. O'DWYER: I just wanted it noted for the record that he talked with Mr. Pieretti and made an appointment with him -- with Mr. Pieretti to meet him here.

JUDGE JALETTE: If you want to go into that, the objection is overruled.

- Q. (By Mr. O'Dwyer) Why did you come to the Labor Board?

 A. To file an affidavit on behalf of Mr. Pieretti, that he was fired by the company.
 - Q. Did you in fact file that affidavit? A. Yes, I did.
- Q. Had you made arrangements with Mr. Pieretti to come here to see you? A. Yes, I did.
- Q. When you were here did you call him? A. In front of Mr. Epifano.
- Q. Was he home? Did he answer? A. I think we both tried to look up his phone number in the book -- in the Brooklyn phone book, and then eventually I called my office and Mr. Epifano spoke to my secretary personally to get the phone number, because I wanted to make sure that everything was done correctly.

And I think we made an attempt then to call Mr. Pieretti.

Q. Was he in? A. I really don't recall.

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I know we made an attempt to call him in the presence of the Board Agent.

CROSS EXAMINATION

- Q. (By Mr. Appell) Mr. Nuchow, Local 840 had a contract with General Iron, did it not? A. That's correct.
- Q. And that covered the employees who worked at -- in the shop in production and maintenance? A. That's correct.

- Q. Drivers? A. One driver at the time.
- Q. And that contract ran from 1971 to 1974? A. I believe that's correct.
 - Q. And the -- A. August '74.
 - Q. Did the contract expire on or about August 22, 1974?
- 409 A. I think that's the date.
 - Q. Did Mr. Pieretti ever ask you to take his case to arbitration?

 A. I would say in some discussion we had outside the factory that he did indicate if you -- if I wished to do it I could do so.
 - Q. Did he ask you to do it?

Did he initiate -- A. I don't know if you interpret the question initiate. It was during the form of a discussion, Mr. Counsel, and out of that form of discussion I felt my interest of the Local Union and Mr. Pieretti's interest based on his discussion we take the case to the Board.

- Q. (By Mr. Appell) Was Mr. Pieretti present when you took a vote of employees on May 28th as to whether they still wanted employees -- they still wanted your union to represent them? A. I don't really recall.
- Q. (By Mr. Appell) When did you first learn of 455 organizing
 A. I don't recall the date.

I received some documents from the National Labor Relations Board that they are intervening into the General Iron Corporation as an intervenor.

Q. Was it in May? A. I don't recall.

It was a number of months back.

- Q. Was it before or after you heard the vote in the shop?
- 414 A. I don't really recall.
 - Q. When you spoke to Mr. Howard you were aware at that time that Local 455 was trying to come in, weren't you?

 A. I don't recall.
 - Q. Well, can you explain why you brought up Mr. Colavito and Local 455 tough guys then, if you did not know about Local 455 being at this ship? A. I don't recall the date and the time.

I received documentation from the Board that 455 is acting as an intervenor in the election for certification at the Board here.

Q. In other words, you knew that Local 455 had filed a petition? A. Yes.

I don't know what employees were involved.

- Q. Would it be fair to state that you knew about this at the time you spoke to Mr. Howard about Local 455? A. It's possible.
- Q. How many times would you say you spoke to Mr. Howard in May of -- in May and June of 1974? A. Three or four times probably.
 - Q. Always at the shop? A. Yes.
- Q. He was the shop steward? A. For Local 840 he was.
 - Q. There came a time when you learned he was involved with Local 455? A. He told me.

I didn't hear it. He told me.

Q. When did you first -- ar you -- is it your testimony that you never knew that Mr. Pieret. was for Local 455, is that what you are -- what you testified to earlier? A. I knew Mr. Pieretti is a very strong union man in the shop who really wanted

to show -- to see a good contract and better working conditions for the workers in the shop.

- Q. You had no knowledge he was supporting Local 455?A. Not in the period you are asking me.
- Q. You did not know -- when did you first learn that he did?

 A. I think probably after I was laid off or fired.
- Q. When did he first show his support for Local 455?

 A. I think I met him one time in the street coming -- walking towards the factory. And he said he was fired, and I told him let's go upstairs and talk to the employer, and I said you come with me, let's fight and try to get your job back.

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And he says, you know, I am with 455, I said I don't care what local you are with, you have a family, you have a right to make a living, you have a responsibility.

- Q. So you did know at that time that Mr. Pieretti supporting Local 455? A. I think he told me.
- Q. You knew he was showing his support openly for Local 455 in the shop? A. Absolutely not.
- Q. You did not know that? A. That's not the question you asked me counsel.
- Q. I am saying -- I am asking you that now? A. Absolutely not.
- Q. Did you ever learn that, that he was showing his support openly for Local 455? A. I heard it here today by the witness you had on the stand.
 - Q. That's the first time you have heard of -- that?
- A. That he was an open supporter of Local 455.

Q. (By Mr. Appell) Mr. Nuchow, I show you General Counsel's Exhibit 9.

I direct your attention to the third page.

Is that your signature that you read that statement, swear it's true?

(Handing document to witness.) A. Yes. It's my signature.

428 JUDGE JALETTE: Your objection is overruled.

I am going to apply the same rational that you were applying earlier when you wanted me to receive the affidavit -- it was Mr. Pieretti's, in which you asked me to look at lines nine through twenty, and then we deleted some lines, why, because you said I can't read paragraph 12 without reading it in context with lines 9 through 20.

The same principle is being invoked here by your opponents, who say I cannot read the portions that you want without evaluating the other portions.

So applying that same rational, I will overrule your objections, and the statement of Mr. Nuchow, which I believe in effect is being offered in its entirety, would that be a correct statement?

MR. PETIT-CLAIR: Yes.

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16 Court Street Brooklyn, New York Wednesday, December 4, 1974

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MARIO ACCARINO

called as a witness, first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

- Well, I guess I'd be considered part of management, and just several duties as an officer of a corporation.
 - Q. Do you ever supervise any activities in the shop of General Iron? A. At times I do.
- 460 Q. Is that your primary role? A. No.
 - Q. I take it your primary role is in the office?

 A. More office.
 - Q. And who supervises, if you know, the activities which go on in the shop? A. Henry Accarino.
 - Q. Do you have a formal division of responsibilities with Henry Accarino, whom I presume is your brother? A. Cousin.
 - Q. Cousin.

Do you have a division of responsibilities as between the two of you? A. Yes, I do.

Q. Well, would you tell me what it is? A. Well, he would confide in me in different things, purchasing materials, possibly making --

JUDGE JALETTE: What are his responsibilities?

THE WITNESS: Henry's responsibilities?

JUDGE JALETTE: Yes.

THE WITNESS: He's in the plant 90 percent of the day, and he runs the plant in all respects to production and men -- employees.

- Q. (By Mr. Petit-Clair) Did there come a time in May of 1974, when you became aware of the existance of that union?

 A. Yes.
 - Q. And how did you become aware of their existence?

 A. Telegram.

Q. I show you now an exhibit which has been marked in evidence as G.C. 10.

Do you recognize that telegram?

(Handing document to witness.) A. Yes.

That's the telegram I received.

- Q. And prior to the time you received this telegram, had you any communication with any representatives of Local 455? A. No.
- Q. Did you ever become aware at any time that either Mr. Leroy Howard or Mr. Jose Pieretti had signed union cards for Local 455? A. No.
 - Q. Were you ever aware at any time that Mr. Marcellus Vilcius signed a union card for Local 455? A. No.
- Q. Were you ever aware that Mr. Sanchez Agosto had signed a union card for Local 455? A. No.
 - Q. Were you ever aware that Mr. Charles Bailey had signed a union card for Local 455? A. No.
 - Q. Were you ever aware that Mr. Louis Escalera had signed a union card for Local 455? A. No.
 - Q. Were you ever aware that a Mr. Carlos Gonzalez had signed a card for Local 455? A. No.
 - Q. How about Mr. Pellot Reyes, were you ever aware that he had signed a card? A. No.
 - Q. We've covered Mr. Vilcius and Mr. Pieretti already. A. Yes.
 - Q. Were you ever aware that a Mr. Dominick DiMambro had signed a card for Local 455? A. No.
 - Q. Is Mr. DiMambro still employed by you? A. Yes, he is.

- Q. Were you ever aware that a Mr. Louis Cardona had signed a card? A. No.
- Q. Is he still employed by you? A. I don't know for sure unless we check the active payrolls.
 - Q. Mr. Michael Ortiz, are you familiar with him?
 - A. Yes.
 - Q. Were you aware that he signed a card for Local 45?
 - A. No.
 - Q. Is he still employed by you? A. Yes.
 - Q. Mr. Vincente Hernandez Raymon, are you familiar with that gentleman? A. No, I'm not familiar with him.
 - Q. Mr. Herman Pagan, are you familiar with Mr. Pagan?
 - A. I was, but he's no longer employed.
 - Q. You know when he terminated his employment?
 - A. I don't remember the exact day.
- Q. (By Mr. Petit-Clair) Mr. Accarino, how many employees are employed by you presently? A. I would say about 35 or so.
 - Q. And how many were employed by you in March and April of 1974? A. Approximately say about 25 or so.
 - Q. And did there -- now, during the course -- strike that last question.

During the course of 1974, and I'm talking about prior to June of 1974, did there come a time or was there a change in the amount of business that your company did?

MR. APPELL: May I hear that question back, please?

JUDGE JALETTE: Read the question, please.

(Whereupon, the reporter read back the last question.)

A. Yes, there was a slight change.

- Q. And what was that change? A. Well, we developed a new line of items, and there was a change in the dates of production for --
 - Q. Hold it a minute. A. I'm sorry.
 - Q. As a result --

MR. APPELL: Objection, Your Honor, the witness was not allowed to finish his answer. He was told to hold it as he was still talking.

JUDGE JALETTE: Objection sustained.

The answer was responsive, and I don't know why you interrupted him, Mr. Petit-Clair.

MR. PETIT-CLAIR: Because he was answering, I think a compounded question which had not been asked, Your Honor, but complete your answer, Mr. Accarino.

JUDGE JALETTE: You said you developed a new line, and what else?

THE WITNESS: New lines of items, and the changes of production, the dates were changed.

JUDGE JALETTE: Change of the dates of production? THE WITNESS: Right.

They had to be pushed ahead, deliveries wouldn't be until -- MR. PETIT-CLAIR: I think if Your Honor will allow me to finish the questioning it will become clear.

- Q. (By Mr. Petit-Clair) Now, as a result of developing the new line was there any increase in your work force? A. There was, right, absolutely.
- Q. And did that increase in your work force occurred in April and May of 1974? A. Yes.

Q. When did the increase in your work force occur?

A. March, April or early May.

- Q. And did there come a time when the increased work force had to be curtailed? A. Yes.
- Q. And when did that occur? A. Towards the end of May.
- Q. And could you tell me the reason why the work force had to be curtailed? A. Well, there was a change in shipping dates for this new line of items.
- Q. Did you -- were you responsible for the change?A. Yes, in a sense, yes.
 - Q. I show you now a document --

MR. PETIT-CLAIR: Which I'd ask to be marked as Respondent's Exhibit 5 for identification.

Q. At this time, Mr. Accarino, I show you a document dated May 20, 1974.

Would you tell me what it is?

(Handing document to witness.) A. This is a letter from our sales representative who is marketing our new line stating to hold up further shipments until mid June because of department store economic reasons of buying power in department stores.

- Q. And was it because of this message from your sales representative that you curtailed your work force?
- Q. After you were notified by your sales representative of the postponement of delivery of the new item, what did you do? A. Discussed it with my cousin Henry, and we figured the best think to do was to let go some of the people.
 - Q. And did you do that? A. Yes, we did.

- Q. Mr. Accarino, were the people that -- excuse me,
 by what manner was the lay-off done?
 How did you do it? A. Well, by low man on the totem pole.
 - Q. Does that mean seniority? A. Yes.
- Q. (By Mr. Petit-Clair) With respect to Mr. Agosto, Bailey, Escalera, Gonzalez, Pellot Reyes or Carrion, did you have any knowledge that they had engaged in any union activity with respect to Local 455? A. No.
 - Q. Was there any reason for their lay-off other than that which you stated? A. No.

That's the only reason.

- Q. Subsequent to this lay-off period, did there come a time when your business improved? A. There have been times, yes. It happened.
- Q. I direct your attention to early June of 1974, had business picked up by that time? A. Yes.
- Q. And as a result of that increase in business were you able to or did you increase your work force?

MR. APPELL: Objection.

JUDGE JALETTE: Overruled.

A. Yes, we did.

- Q. Now, prior to or when you became aware that business was improving did you attempt to rehire either or any of the individuals known as Sanchez Agosto, Louis Escalera, Charles Bailey,
- Enrique Pellot Reyes, and Jose Carrion? A. Yes, there was.
 - Q. And how did you attempt to rehire these men?
 A. It was done by mail.
 - Q. Did you give any preference to any of these men with respect to rehiring? A. No.

Q. Did you rehire them in the same fashion in which you laid them off?

JUDGE JALETTE: He didn't say he rehired them. He said he was offering --

- Q. Or attempting to rehire them, in the same manner in which they were laid off, by seniority? A. Yes.
- Q. (By Mr. Petit-Clair) Mr. Accarino, during the time that Luis Escalera, Carlos Gonzalez, Manuel Sanchez Agosto, Charles Bailey, Enrique Pellot Reyes, Marcellus Vilcius and Jose Pieretti, whom I shall refer to in the future as the persons laid off and discharged, at the time of their employment did you ever have any conversations with any of them with respect to any union activity? A. No.
- Q. Did you ever have a conversation with Mr. Pieretti
 wherein you told him that you would fire him if he took
 another day off? A. No.

CROSS EXAMINATION

- Q. (By Mr. Appell) Mr. Accarino, how much time would you say you put in in the shop itself during the ordinary work day?

 A. Depending, some days I don't put any time, some days I put an hour, or it could be six hours, half hour.
- Q. What do you do when you're in the shop? A. I make samples at times or fixtures, set up fixtures, specific operations, welding fixtures.
- Q. And when you do this, do you work along with workers in the shop or do you do it alone? A. Normally I do it alone.

- Q. Do you ever have workers help you? A. Very rare, maybe a welder just to tack something for me.
- Q. Do you ever have occasion to talk to the workers in the shop? A. I could at times.
- Q. Did you ever have occasion to hear what they're saying to each other? A. Not really. No.
- Q. Now, how did you become aware of the telegram from Local 455? A. It was delivered to the office.
 - Q. Who opened it, do you know? A. I opened it.
 - Q. After you opened it what did you do? A. Called up our attorney.
 - Q. What else did you do? A. Showed it to my cousin Henry.
 - Q. Did you show it to anyone else? A. I don't think so.
- Q. Are any skills required of a helper or machine operator for other divisions as opposed to the new division? A. No.
 - Q. And is it your testimony that you have no records to show that production went down in May '74? A. No, we don't keep any production records at all.
 - Q. Am I correct if I state that you had no seasonal fluctuations?

MR. PETIT-CLAIR: Objection to the form of the question.
JUDGE JALETTE: Overruled.

A. Seasonal?

- Q. Yes. A. No, I really can't say seasonal had anything to do with it.
- Q. Now, you said there was a change in shipping dates for the new lines of items. What was the original date and what was

the change date? A. Well, there was no exact specific date that we had to ship on. We had orders in the house to be shipped --some orders -- and they would change from that day, when it was in May, sometime in May, to ship latter part of June.

- Q. Was the work ever stopped, actually stopped, or did production go on in the new line? A. It was never stopped. I mean to a dead stop or anything like that there. It was just cut back.
 - Q. Well, could you be more specific as to how it was cut back? A. Well, if we had 25 percent of the plant working on it, we dropped it down to like five percent or something. Or if we had ten people working on it we had three, something in that order.
 - Q. You did have sufficient work in the other divisions; is that correct, at that time? A. I don't know. I don't remember. It's possible.
 - Q. There were no cut backs in the other divisions at that time, were there? A. I really don't remember.
- Q. So that all the things that had been ordered still had to be produced; isn't that correct? A. Yes, up to -- yes.
 - Q. And they were eventually produced; isn't that correct?
- 527 A. No. They still never were.
 - Q. What's that? A. They still were never produced.
 - Q. Why is that? A. We had other problems also.
 - Q. So this work was never done, is that what your testimony is? A. It was never completed as far as the way we should have completed the shipments because we occurred other problems in the manufacturing of the line.

- Q. But you did hire new people in June, did you not?

 A. Yes, we did.
- Q. And in July and August and September? A. Yes, we did hire, yes.
- Q. (By Mr. Appell) Mr. Accarino, did Henry Accarino ever talk to you about Local 455?

MR. PETIT-CLAIR: Objection.

JUDGE JALETTE: Overruled.

A. Yes, he did.

- Q. And do you remember the first time it was that he spoke to you about it? A. After we received the telegram.
- Q. What did he say to you? A. I really don't remember. Just shop talk about who this other union is, and things like that.
 - Q. Who might be supporting it? A. Yes, naturally.
- Q. Do you remember what he said to you about that?

 A. No.

We were both disgusted as far as -- in other words, receiving a telegram stating that they have a majority of * * *

- Q. When was the next time, if at all, you spoke with Mr. Henry Accarino about Local 455? A. I believe the next time when Mr. Schifano and another gentleman appeared at the office. I think that was.
 - Q. That was six to eight weeks ago from today? A. I think about that.
 - Q. In other words, it's your testimony you never discussed Local 455 with Henry Accarino from the time you discussed it after

the telegram came up until six or eight weeks ago; is that your testimony? A. Well, I spoke to the attorney about it.

MR. PETIT-CLAIR: I'm going to object to any inquiry with respect to what he talked about with his attorney.

JUDGE JALETTE: He hasn't asked. He was asked about whether or not his testimony was that he spoke to his cousin Henry Accarino about Local 455 on only one occasion.

A. I don't remember if there were any other occasions.

- Q. Do you talk to Henry Accarino about problems in the shop? A. At times.
 - Q. Would you say you do that on a regular basis? A. No.
- Q. If men have grievances or gripes, does Henry discuss them with you? A. I guess if they're serious enough for him to confide in them he will.
 - Q. Did you have any decision in the lay-off?Did you have anything to do with that? A. Excuse me?
 - Q. Did you have any decision having to do with the decision to lay-off the six men in May? A. No.
 - Q. No one consulted with you about it? A. Well, we discussed it -- Henry and I discussed it, that we have to lay some people off a while.
 - Q. When did you first start discussing that? A. Well, originally I had conversation with Mr. Garment --

MR. PETIT-CLAIR: I didn't get that name.

JUDGE JALETTE: Conversation with Mr. Garment.

A. -- prior to receiving the letter.

- Q. When did you start discussing it with Henry? A. Well, after meeting with Mr. Garment.
 - Q. When was that? A. I don't remember.
- Q. All right. A. I don't remember specific date or anything.

MR. PETIT-CLAIR: The exhibit is in evidence, counsel.

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HENRY ACCARINO

was called as a witness, first being duly sworn, was examined and testified as follows:

JUDGE JALETTE: Be seated, please.

Give your name and address to the reporter.

MR. APPELL: May I have a moment, Your Honor?

JUDGE JALETTE: Yes.

THE WITNESS: Henry Accarino, A-C-C-A-R-I-N-O. 250 6th Avenue S., Brooklyn, New York.

DIRECT EXAMINATION

- Q. (By Mr. Petit-Clair) Mr. Accarino, what is your position with the General Iron Corporation? A. President.
 - Q. Would you speak up? A. President.
- Q. And what functions do you perform in the corporation?

 A. Well, I'm mostly down at the factory, I would say 90 percent of the time.
 - Q. Would it be fair --

MR. APPELL: I can't hear the answers.

- A. Ninety percent of the time I'm down at the factory with the men.
- Q. Mr. Accarino, would you please keep your voice up. It's difficult for me to hear you also.

Would it be fair to characterize you as the person who is generally in charge of production in the shop? A. Yes.

- Q. And to your knowledge, are you the officer, supervisor of the General Iron Corporation most familiar with the employees who work in the shop? A. Yes.
 - Q. And do you also recommend the hiring and the firing of employees? A. Well, some. Some of it. We have various

departments, and if a foreman, you know, wants to get go a man, he'll discuss it with me, you know, to see -- and I'll judge, whether he's right or wrong, you know.

- Q. Do you have the final say? A. Well, pretty much so But I will give the foremen, you know, the benefit of the do., the man that he's working with.
- Are you familiar with two employees by the name of former employees Marcellus Vilcius and Jose Pieretti?

 A. Yes. Yes.
- Q. How long had Mr. Vilcius worked for you? A. Well, I would say maybe seven, eight months, maybe a year. I'm not too sure. But quite a while.
- Q. And what job did he perform for you? A. Well, I had him on one job putting a ball at the end of a piece of wire.
- Q. Could you describe the job? A. I say putting a ball on the end of a piece of wire. Actually he didn't do it. The machine

does it. I set up the machines. All our machines basically are the same way. The operator, the man knows almost nothing about the machine. All he does -- when I set it up -- they all have electronic timers.

It's all done -- it's all set up -- I will set the machine up first before I put him on it. And all -- he basically does is lay the piece of wire into a groove or on top of one another, and step on a pedal. The machines does the rest. It's not left up to him.

- Q. Was this the first job he had when he came to work for you? A. Yes.
- Q. For how long did he work at that job? A. A few months, like, I would say about four or five months.
 - Q. Out of the entire -- A. Yes.

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- Q. Was that a continuous period of time? A. Well, it was a job that we had a run on and I kept him on the job until it finished.
- Now, aid there come a time that you gave Mr. Vilcius other jobs A. Yes.
- Q. What was the next job you gave him? A. I gave him another job, bending 10,000 watt handles, small pieces of wire, bent in a U.
 - Q. And could you describe how this job was done?

 A. He just had to lay it into a fixture and step on the pedal and it would come out finished, and throw them into a barrel.
 - Q. Now, was the reason that you had given him this second job the fact that you had -- A. Finished the first job, that job was finished, yes.
 - Q. Did there come a time -- who well did Mr. Vilcius do the first job you gave him? A. Well, he done it -- he done the job, but with a lot -- not a lot -- I wouldn't say too much, I'm pretty tolerant and I have a lot of patience. He would always tell me no good, no good, the machine was no good, you know. That's about the only word he knew was no good.
- A. He did it fairly well, but as I say I would have to be on top of him make sure that he would do it right because he would holler no good and I would go over there and look at the machine and maybe tell him do it this way, hold it this way, and put it in a groove, you know, and he would start to do it again.
 - Q. How did you communicate with Mr. Vilcius? A. Well, through motions, actually through motions. I speak English but I know he didn't understand me. I would actually show him the operation, show him exactly what I was doing before I would let him

do it, and then stand there and then maybe even hold his hand and place it where the piece had to go so he could do the job.

- Q. Now, in terms of the various jobs in your shop, how would you rate the complexity of the first job that Mr. Vilcius did? A. Very, very, very simple, very simple.
- Q. It was the simplest job in the shop? A. One of the simplest jobs.
- Q. Now, after six months you moved him on to the other job, bending the handles; is that right? A. Right.
- Q. How well did he do that job? A. Well, through some -- I had to teach him and show him exactly like I showed him the first job, and he got to the point where he did it.
- Q. Would you describe how that job was done? A. Just placing -- was placing a bent piece of wire into a fixture and just stepping on the pedal and it was swedging the ends.

JUDGE JALETTE: S W E D G I N Y, swedginy? THE WITNESS: Right.

It's for a pot, a Chinese pot.

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- Q. Am I to understand it would flatten the end of the wire?

 A. Right. Exactly.
- Q. In terms of the complexities of the various jobs in your shop, how would you rate that job? A. Another simple job.
- Q. Now, you said that for the first six months you had no complaints or few complaints? A. Minor, you know. The every day complaints let's say. But it don't bother me.
 - Q. Now, what was it about what he did with the second job that met with your disapproval? A. When he would make one handle he would throw it into -- we have 20 gallon pails. He would fill these 20 gallon pails. Then there would be -- they would be

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taken into the Shipping Department, counted, put it in smaller boxes so they could be handled, and shipped out to the customer.

While he was making them, he had about five or six barrels finished. I couldn't tell him take them into the Shipping Department, so I --

- Q. Why was it that you couldn't tell him? A. Because he wouldn't understand me. I knew that.
- Q. Did you ever make attempts to communicate with him in his own language? A. No, I can't.
- Q. Did you ever have any other supervisors who attempted to -- A. I did try -- there was one time, there was a case -- I really don't even remember all about it. It was a simply thing, I think --
- Q. With respect to communicating with -- A. This is what I'm coming to.
- All right. A. It was a simply thing, we were all at -- we ver at the time clock, the men were punching out, so he showed he his time card or his check, I really don't remember what the incident was about, so as the men were walking out, I grabbed Leroy and I said Leroy, could you understand --
 - Q. Would you identify Leroy, please? A. Leroy Howard. I said, could you communicate with this man, I want to tell him something about his check. It was something in reference to his check. I really don't know what the incident was all about.

He went like this, what are you kidding me, and he walked out. I think I grabbed ahold of Robert Perez and I asked Robert Perez, Robert, can you talk to this man. And he said no, I can't communicate with him. So I remembered this Michael came from the islands.

Q. It was another employee? A. Yes. He's still with us. I remembered that this Michael came from the islands and I says oh, Gee, Michael comes from St. Thomas, he could probably

understand him. So I called Michael over, I says Michael, would you please try to explain to this man about the card. He looked at me, he says I can't speak French.

So actually I had nobody inside in the place that could speak French.

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- Q. *** Now, you explained that to your knowledge no one in the factory was able to communicate with Vilicius? A. No.
- Q. What did he do that precipitated his discharge while he was making those handles? A. Well, when he finished the five barrels, I got a hand truck and we put them on a hand truck, and he's got to take them through two buildings into the Shipping Department. And I showed -- I only did this to show him where they were suppose to be put.

So I told him, wheel it -- he followed me, I took him to the spot, and I said put them right here, you know. And I walked away, you know.

- Q. And you would explain this by means of gestures?

 A. Right, you know. And I just went like this, you know, and go back --
- Q. At that time did he indicate he didn't understand the instructions? A. No, he said okay, you know. I thought he understood me, and he did understand me, he brought the five barrels to the point where I told him to bring them.

JUDGE JALETTE: Continue.

A. Then he done me a favor. I have --

Q. When you say a favor, do you mean that he actually did you a favor? A. I'm joking actually. He done me harm. He not only did the five -- not only brought the five barrels to the point, but along side of them there are -- now they are hand counted

by people that can count, you know, a man, they're hand counted and put into a smaller box so he can carry it because they're quite heavy.

It was 5,000 counted. And he took it upon himself, I don't know why or how, but, he just throw them in the box and put them into the master pile without being told to do that.

JUDGE JALETTE: You mean emptied the barrels? THE WITNESS: Right.

He took them out of the barrels and put into the pile. He probably seen the box and probably said probably this is what had to be done. He don't know they had been counted.

Maybe an hour later I walk by and I notice the barrels empty, and I seen them in the master pile and I immediately asked the shipping clerk, did you count them already. He says no, he didn't count nothing. So I took one box up, there's 250 in a box, and I picked up the box naturally to the far end of the pile, and I counted it, there was nowhere near 250, it was all mixed up, he just threw handles to fill the box up.

So through that, I had to take the entire 10,000 pieces and recount them, and put them into the boxes, you know, probably.

- Q. Did that take a great deal of time? A. Well, 10,000, yes, it must have took maybe -- could have taken a good part of the day, or more.
- Q. Now, are you familiar with all of the operations in the shop? A. Yes, pretty much so.
- Q. And are you adversed in doing all of the operations?

 A. Pretty much so, yes.
- And is it your responsibility to show the men how to do these various operations? A. I always do.
- Q. You said before that you had given Mr. Vilcius, as I understand it, the two simpliest jobs in the shop? A. Yes.

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- Q. In your opinion was he capable of doing any other jobs?

 A. If I had a translator there by my side to explain it to him, he might have been able to do it, yes.
- Q. Is it fair to say your biggest problem with him was an inability to instruct him in his work? A. Yes, of course.
- Q. What were his other habits as an employee? A. Did you say habits?
- Q. Habits. Was he punctual? A. He was pretty punctual, yes.
 - Q. Did he have a lot of absenteeism? A. No.
 - Q. Did he drink on the job? A. No.
 - Q. As I understand your testimony the only fault you had with him was an inability to talk to him? A. Yes.

And the fear of him making a mistake one day that would probably hurt somebody or cause some trouble in the plant. He could start a fire, you know. I don't even think he knew what, you know, -- he comes from Haiti and I was in Haiti, I know the island.

I'm just saying -- well, I got a little frightened because I felt that the man would cause damage also by not understanding.

Q. And was it on the date that he did this thing without being told was that the day that you fired him? A. Yes.

MR. APPELL: Objection, leading.

JUDGE JALETTE: Objection overruled.

- A. Yes, that was the day. I just couldn't take it anymore.
- Q. Now, you've heard the testimony of your brother Mario
 -- your cousin Mario? A. Yes.
 - Q. With respect to the period of time involving April, May, and June of 1974?

Would you agree with his testimony insofar as it sets forth the reasons why Mr. Sanchez Agosto, Mr. Bailey, Mr. Escalera, Mr.

Gonzalez, Mr. Pellot Reyes and Mr. Carrion were laid off? A. Yes.

- Q. Who decided that they would have -- there would have to be lay-offs? A. I probably was the one that decided that, because we didn't have the work for them.
- Q. I didn't hear you. A. I said I probably decided that we had to lay-off some people because we didn't have the work for them down at the shop.
- Q. And how did you select those to be laid off? A. The last ones hired, you know, through seniority.
- Q. Did there come a time when the work in the shop picked up? A. Sure. Yes.
- Q. Do you recall when that time was? A. It might have been a month after. I mean I'm not too good on dates, but I know we picked up, and we, you know, slow up.
- Q. Now, at the time that the work picked up, did you attempt to recall the men you had laid off? A. Yes.

I told Mario to rehire the men that were laid off.

- Q. How did you do it? A. Actually, I told him.
- Q. You told who? A. I told Mario or the secretary to write up, you know, get them back.
 - Q. You asked them to draft letters? A Right.
 - Q. Did you see the letters that they drafted? A. Yes.
- Q. Did those letters meet with your approval? A. Yes. Simple letter.
 - Q. Did you sign the letters? A. Yes.
- Q. I show you now Exhibits marked for identification 10-A, 6-A 3, 7-A, 8-A and 9-A, and ask you if you know what these exhibits are? A. Yes. These are the letters.
 - Q. Would you please identify those exhibits for the record.

 JUDGE JALETTE: He said those are the letters.

560 MR. PETIT-CLAIR: I'm sorry.

Q. I take it these are the ones you signed recalling the men? A. Yes.

JUDGE JALETTE: Copies of the ones you signed?

THE WITNESS: Right.

JUDGE JALETTE: What happened to them after you signed them?

THE WITNESS: Well, they're put on a desk and it's then taken to the Post Office.

- Q. (By Judge Jalette) Do you know what in fact was done with those that you signed? A. Well, I know they were -- they were put where we hold the mail in the mailbox and Mario or the girl takes them to the Post Office in the morning and mail then. They pick up mail every morning.
- Q. When they were placed there for mailing were they already in an envelope sealed? A. Oh, yes, definitely.
- Q. (By Mr. Petit-Clair) Was this the normal custom in your office? A. Well, it is normal. We have Pitney Bowes machine.

 They weren't sent out that way. But there's a mailing spot that they use to mail and they leave it there and in the morning they bring it and -- we pick up our own mail, see.
 - Q. It's been your experience that letters that you have normally signed and left at that place have subsequently been mailed?

 A. Always mailed.
 - Q. And received? A. Of course.
 - Q. By the parties who are the addressees? A. Right. JUDGE JALETTE: If I may, I'm not familiar with the form which is 6-B.

What is that form, do you know?

(Handing document to witness.)

That's not a form that you keep a supply of in your office?

THE WITNESS: No.

JUDGE JALETTE: What do you know about it?

THE WITNESS: Actually I don't know much about it. I didn't bring the mail -- I didn't have it mailed. Mario takes care of it. That's his job.

Q. (By Mr. Petit-Clair) Were any of these letters ever returned to you, Mr. Accarino? A. No.

MR FETIT-CLAIR: Your Honor, at this time I will move those letters into evidence.

- Q. (By Judge Jalette) Is it customary for you to send mail, and to obtain a proof of mailing in that fashion? A. Sure.
- Q. You always do that? A. We bid a lot of government work and we do that, yes.
 - Q. On government work? A. Yes.
 - Q. What about other kind of work?
- MR. PETIT-CLAIR: Mr. Accarino said he doesn't know the mailing policies.

A. I really don't, but I know we send out mail that way, I know that. But I am not -- for every --

MR. PETIT-CLAIR: Off the record?

JUDGE JALETTE: No, on the record.

MR. PETIT-CLAIR: Then I will state to Your Honor, I will represent to the Court, that obviously when they lay-off people, people are qualified for unemployment insurance, and apply thereto, which the employer must contribute. Therefore, if he asked them to return to work it decreases -- it mitigates his liability.

JUDGE JALETTE: Your problem about that -- of course what you state doesn't constitute evidence of what is done. I'm asking Mr. Accarino, and if Mr. Accarino knows he can answer, and if he doesn't,

he can say he doesn't know. I'm not interested in your assertions because they're not evidentiary.

MR. PETIT-CLAIR: That's why I said off the record.

If Your Honor will, I will put Mr. Accarino on the stand to testify to that effect with respect to these. He said he mailed --

JUDGE JALETTE: There's a reoffer in evidence of Respondent's Exhibit 8-A and B through 10-A and B.

Mr. Appell?

MR. APPELL: I object. I don't believe a proper foundation has been laid.

JUDGE JALETTE: Your objection is overruled.

And they are received in evidence, not to show that they were received, obviously, simply as evidence that they were sent.

- Q. (By Mr. Petit-Clair) After you dispatched these letters which are not in evidence to these various workers, did any of them return to work?

 A. Well, I think one did. I think one did.
 - Q. If I gave the name of Mr. Jose Carrion, would that be -- A. I'm almost sure but I'm not positive because I am very bad on names. I don't remember.
 - Q. Now, after you laid off Mr. Carrion, between that time and the time you returned to work, which I believe was stipulated to be in August of 1974, did you have any communication with Mr. Carrion?

 A. No.
 - Q. Do you know why it took him from June of 1974 to August to return to work? A. The truth is I don't even know the man -- I mean I don't know the man you're talking about. ***
- Q. Are you familiar with an employee by the name of Jose Pieretti? A. Yes.

- Q. I believe you testified that he had worked for you for a substantial period of time prior to July of 1974? A. Yes.
- Q. What was Mr. Pieretti's job with respect to the General Iron Corporation? A. Well, he was more or less like a helper -- a helper.
- Q. Did he operate any machines? A. Well, yes, he would operate machines.
- Q. What kinds of machines? A. Well, maybe a power press or -- mostly spot welders.
- Q. Do you have many different kinds of spot welders at General Iron? A. Yes, we do.
- Q. Are they all basically different? A. Well, they're basically the same. They're basically the same. But set up differently, let's put it that way.
- Q. Well, how would you describe the difference?

 A. They're all work on the same principal. But my job is to set them up to let them do certain things.
- Q. Is anyone of these spot welders more dangerous than another? A. No. No. They're all the same.
 - Q. Have you had any substantial history with respect to these spot welders have accidents or injuries on the job which might be due to these machines? A. None to speak of. But through carelessness a man, let's say, deliberately could put his finger under an electrode if he wanted to, but if he didn't want to, couldn't do it, impossible.
 - Q. Would you describe how these machines operate?

 A. Let's take one headed is two tips, it would make one weld, there's two tips, and there's a foot pedal.

JUDGE JALETTE: Let the record indicate his witness is pointed to two tips, one on top of the other.

- A. The only thing the operator has to know is to step on the pedal putting the object that he wants to weld under the tip. Once he gets it placed under there with his two hands he steps on the pedal. The machine then makes a complete cycle of pressure, electricity and timing and go through a cycle automatically and stop when the weld --
- Q. The only thing required of a spot welder on any of these machines is to insert the material, step on the pedal, and wait until the machine completes the welding operation.

 A. Right.
- Q. Are there any special devices which you use in your plant in conjunction with these machines to hold work? A. Yes. We call them jigs or fixtures.
 - Q. Who designs these fixtures? A. I do, Mario does.
 - Q. Now, with respect to the fixtures that were on the machines on which Mr. Pieretti worked who designed those fixtures? A. I did.
 - Q. Could you describe the fixtures that were on the machines on which Mr. Pieretti worked? A. Well, on one job, and I brought an item with me --
 - Q. Is that the last job he worked? A. No, no, it wasn't the last. But it was the one before the last. I brought the item with me, I had -- you want to see the item?
- MR. PETIT-CLAIR: For the record, Your Honor, Mr.
 Accarino is describing a swing out slack rack in which there are
 four inserted bars and one bar which is part of the base, and which
 are hinged on one side and are free to open and close on the other.
 - Q. (By Mr. Petit-Clair) How long did Mr. Pieretti work making slack racks? A. Well, I had him on this job about three days.

- Q. Was this close to the time where he was discharged?
- A. Well, yes. Maybe six weeks before. Like that, you know, I'm not too sure of the time but a little before.
 - Q. Would you describe the fixture that you designed to manufacture this item? A. Yes.

It's a fixture that holds this outer frame. This outer frame is made by somebody else. And it's got slots where you insert these four wires into it. And you then lace this part under the tip and it welds it, welds it, welds it, welds it, welds it, turn it over, welds it, welds it, welds it, and it's finished.

Q. Is it impossible or is it possible to insert the wires in the fixtures other than in the way the fixture is designed?

A. No.

Because I have slots that these go into. You must put it into a slot. And on the top I have a loop here that holds this here to show the man that this is the top.

MR. PETIT-CLAIR: For the record, Your Honor, he's illustrating the neck of this item w. ch is shaped the same as a hanger.

- Q. Is it possible to insert the top of that stack hanger into the jig any other way? A. Not according to my way my jig was made but if you didn't go into this here hole you could make this thing here backwards.
 - Q. But there was a stop design so you wouldn't do that?A. Not on one of them. I have three machines doing the same work.
 - Q. But on the machine that Mr. Pieretti was working on was there a stop -- A. They're all built the same.
 - Q. Would you describe how Mr. Pieretti manufactured these slack hangers? A. Well, I started him out on this job, and

well, I gave him about, about four hours. I went by his machine and he had about eight pieces made. I examined them and he had these tails sticking out so a person rubbing their hand on it could cut themselves and these tails sticking out lopsided. I explained to him, I said look, these things have to be even, you can't let them stick out because people will cut themselves.

Yes, okay. He says okay.

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- Q. Did he have any problem understanding your English, Mr. Pieretti? A. No.
- Q. You had no problem in communicating with Mr. Pieretti at all? A. No.

At certain times he would say he don't understand me, and I would get somebody to talk to him in Spanish. I don't know for some reason at certain times he didn't understand. I don't know why.

- Q. Was there any one person you would use more times than others to talk with him in Spanish? A. I would use Mr. Perez, I would use Michael Ortiz. I would use maybe two men in the place that understood English.
- Q. Did Mr. Ortiz work in the same department as Mr.Pieretti? A. Yes.

MR. PETIT-CLAIR: For the record or I would ask Mr. Appell if he will stipulate that Mr. Ortiz referred to in Mr. Accarino's testimony is the same Mr. Ortiz who signed an authorization card, which has been admitted as Respondent's Exhibit 4-M.

MR. APPELL: Perhaps Your Honor, Mr. Accarino knows the first name of the Mr. Ortiz?

THE WITNESS: Michael.

MR. APPELL: I will stipulate it's the same.

JUDGE JALETTE: Stipulation is noted.

- 574 Q. (By Mr. Petit-Clair) Is Mr. Ortiz still employed by you? A. Yes.
 - Q. Did he do essentially the same job as Mr. Pieretti did? A. Similar work but not this work.
 - Q. Now, after you instructed Mr. Pieretti as to what he was doing improperly with respect to these hangers, was he able to effectively perform the job? A. Well, not only wasn't he making them properly, but he -- this item, a man when he gets accustom to the job, give him a day or two, he'll make you 60 or 70 an hour. He'll weld, just welding, he gets all the component parts, he'll weld from 60 to 70 an hour.

The first day Mr. Pieretti did -- well, give or take, might have been 10 or 12, of which five or six were bad.

- Q. Ten or twelve the entire day? A. That's right.
- Q. How many hours was that? A. Eight hours.

JUDGE JALETTE: When was this?

When are we talking about, 1974, '73?

THE WITNESS: Yes.

- Q. About six weeks before he was discharged? A. Yes.
- Q. Did he do anything else besides welding the tips on so that they were dangerous with respect to that particular item?

 A. This job, no. Well, this job, it's not dangerous because I told you I have --
 - Q. I'm talking about --

JUDGE JALETTE: He meant --

Q. That the item was dangerous. Did he do anything else improper about it besides the -- A. Oh, yes.

Well, for instance, this is a five -- what we call a five-T. I found some were one bar missing, maybe at this point, or maybe at this point. A bar left out, some unknown reason. I found one or two made upside down, and when I did, I went to the man --

Q. You're talking about Mr. Pieretti? A. Right.

And I said -- I said -- I told him, Jose, there is something wrong with this, what is it, can you tell me? I held it like this. He looked, and he looked. And he said no, looks good to me. I says, are you sure that this is right, and I turned it upside down showing him that it's upside down.

I went like this here, and I said is there anything wrong with it. He says no. So I said, Jose, you're going to have to stand on your head to hang the clothes on. You made this backwards. Oh, he said, oh. He says don't worry, I'll make them right.

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A. I didn't get excited. And I said, Jose, what's wrong, why can't you make it. I had two other men that I put on the same job that only worked there for, oh, I would say two weeks, three weeks, and they were making 60, 70 -- they were making there 60 and 70 a day, these other two men.

And I went over to him, and I said look, Jose, I have two new men there and they're making them, they're making them

properly, what's wrong. He says I don't know this machine is not right. I said, all right, Jose, you pick out of the three machines, you take anyone you like.

Q. Are these three machines all identically set up?

A. More or less so. They're all set up identical but they're made, let's say, by different manufacturers, but they're all identical in operation. I said, I'll leave it up to you, you pick out any machine you like and I'll put you or that machine and don't make 70, 60, make me 40, but build yourself up, okay. He says yes, okay.

And he did mention that he couldn't see very well, I says look, tomorrow bring in your glasses.

- Q. That was one of his excuses, you know. I said you got glasses, I see you reading during lunch time with glasses, bring in your glasses.
- Q. Let the record indicate that Mr. Pieretti is in the hearing room and he is wearing glasses. A. I said bring in your glasses. He says yes, I will. Next day I put him on. He said no, I'll stay with the machine I got. I says okay, fine. I put him on the job. The same thing was happening. It happened for three days until I said to myself, if I keep this man on the machine he's going to send me bankrupt.
- Q. These expensive items, these hangers? A. Not that expensive.
 - Q. What is their value? A. Well, we wholesale them, it's about \$2.30 wholesale. I figured it out what they were costing me for him to make then, he was better off staying home. It cost me a lot of money for three days.
 - Q. Did you give him another job after that? A. Yes.
 - Q. What was that job? A. Making a simple frame, two up right wires, and three horizontal wires, just lapping one over the other, and welding them.
- Q. In a spot welding machine? A. In a -- same basis -- basically the same thing. He was making them and Miquel Ortiz was -- he was making one section, Miquel Ortiz was assembling the complete item and he called me over, and he says Henry, these things are all song, they're coming back, they're -- he's over-lapping the wire too much and I can't get it into his fixture. These parts have to fit his.
- Q. As I understand it then that Mr. Pieretti was making a subassembly to be assembled by Mr. Ortiz? A. Mr. Ortiz's master, he was using a master fixture, completed item, I went over to him, I says what's wrong, what's wrong with you, can't you see, why can't you do it like anybody else?

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And he just couldn't -- he just -- I don't know why but he just couldn't do it. So I called him -- that day I think I called him up about 4:30 after work, I said I want to see you upstairs in the office. And I sat him down.

And I sat him -- and I spoke to him. And I said Jose, what's wrong. You having any trouble home, you having any problems, what's wrong, why can't you do simple jobs like this. So he then admitted to me --

Q. What did he say?

What was his answer? A. He said I'm afraid of machines. I said what do you mean you're afraid of machines, you're working on them. I said if you don't put your finger by them tips, nothing will ever happen to you. What do you mean you're afraid?

I said, look, I can't hold that against you, you're afraid of the machines. I said maybe you want to be a truck driver, maybe you want to be something else. What are you doing? Are you doing this to let me lay you off. I asked him point blank. It seemed like somewhat of an act --

- Q. (By Mr. Petit-Clair) You said to Mr. Pieretti, as I recall the last piece of your testimony was, that you want me to lay you off? A. I said are you looking for me to lay you off.
 - Q. Did he answer to that? A. Yes.

He said no. He says I want to work. He says I'll keep trying to make this thing, give me a chance I'll keep trying. I says how long can I have you keep trying?

- Q. What was his response? A. He then said, do what you want to do. He went like that, do what you want to do.
 - Q. Do you recall the day that you discharged Mr. Pieretti?
- A. Well, I don't recall the exact date. But I know it was a couple of weeks later.

Q. Had he done anything in particular on the date you discharged him which recipitated the discharge? A Well, yes. He took some time off, he took two days off, and he didn't tell me about it. But he did claim that he told Mario, which has nothing to do with it. He works under me, you know. Q. Would you state your reason for your discharge of Mr. Pieretti? A. Well, the reasons were, you know, amplified from all these incidents and then the fact that he took the time off. that was the straw that broke the camel's back, I guess. Were you ever aware at any time of any union activity Q. 582 on the part of Mr. Pieretti? A. At what time? Q. In April, May, June and July of 1974? A. No. Q. Were you ever aware of any union activity on the part of Mr. Vilcius in that same period of time? Were you aware of any union activity on the part of Luis Escalera, Carlos Gonzalez, Manuel Sanchez Agosto, Charles Bailey, or Enrique Pellot Reyes during that time? Was there any reason for the discharges of Mr. Vilcius Q. and Pieretti other than those that you've stated? A. That's the only reason. Q. Now, in the conduct of the General Iron Corporation whose responsibility would it be between you and Mario to deal with grievances of the workers? A. Well, more so me. Q. Did you deal with representatives of the union? A. Yes. Q. Did you have a shop steward in April of 1974? A. Yes. Q. Who was that? A. Leroy Howard. Q. And what union was he shop steward for? A. Local 840.

- Q. And did you deal with any other union officials from Local 840? A. What do you mear deal with any other officials?
- Q. Do you have occasion to discuss employee grievance with any other -- A. Sure.
 - Q. Who would that be? A. Mr. Nuchow.
- Q. You are indicating the secretary-treasurer of Local 840, William Nuchov? A. I don't know what his capacity is, Mr. Nuchow.

MR. PETIT-CLAIR: Let the record show, Your Honor, that Mr. Nuchow is in the hearing room, and the witness indicated Mr. Nuchow.

- Q. Did you discuss with either Mr. Howard or Mr. Nuchow the lay-offs of those persons I just referred to, and the discharges of Mr. Vilcius and Pieretti? A. Oh, yes. I discussed it with him first.
 - Q. With who? A. With Mr. Nuchow. With who?
 - Q. With Mr. Howard or Mr. Nuchow? A. Mr. Howard.
 - Q. Leroy Howard? A. It I discussed it with them?
- Q. With him?

Did he come to you about the discharges of Vilcius or Pieretti? A. Well, yes, they did come to me when I discharged them, yes.

- Q. Who came to you? A. The shop steward.
- Q. Did Mr. Nuchow come to you? A. He did later on, yes.
- Q. And did he ask you to reconsider the discharge?

 A. Well, he did, yes, he did. He supported the men. I told him I can't take the man no more, he's ruining me, he's ruining the place and I can't take him on.
 - Q. Which man? A. Mr. Pieretti.
 - Q. What about Vilcius? A. And Vilcius, yes.

- Q. Did he discuss with you the lay-offs of the other five, Escalera, Gonzalez, Sanchez, Bailey and Pellot? A. I believe he did, yes.
- Q. Did you ever advise Mr. Nuchow that you had sent these letters to those people who were laid off?

MR. APPELL: Objection.

JUDGE JALETTE: What's the relevancy of that, whether he did or not?

- Q. To your knowledge, did Mr. Nuchow pursue the matter with respect to these lay-offs and discharges beyond conversations with you? A. Yes.
 - Q. What did he do? A. Well, I know he took it to the Labor Board.

MR. APPELL: I move to strike as hearsay. Unless this witness can testify that he was present or any personal knowledge.

JUDGE JALETTE: We have stipulated that a charge was filed by Mr. Nuchow on behalf of Mr. Pieretti. And I will take official notice of the fact that if it was filed, that it was mailed in due course by the Region, and it would go to the president of Respondent.

- Q. Mr. Accarino, did you ever threaten to close your plant if Local 455 organized your employees? A. No.
 - Q. Did you ever have any communication with anyone from Local 455? A. No, sir.
 - Q. When was the first time you knew of the existance of Local 455? A. When I received the telegram.
 - Q. Did you ever have a discussion with Mr. Leroy Howard wherein you stated that you would close the plant, and that 455 would never get a contract from you? A. Never, no, sir.

- Q. Did you ever threaten any other employee? A. I never threatened any employee.
- Q. With respect to union -- his engaging in union activity?A. I never did.
- Q. Were you aware -- just wait until I finish the list -- that Miguel Ortiz, Ramon Usher, Gildo Vargas, Herman Pagan, Davy Murchinson, Leroy Howard, Vincente Hernandez Roman,

Dominick DiMambro, Julio Chinga, William Cheatham,
Louis Cardona, Richard Brown, Louis Accevedo, Jose Carrion,
Louis Ascalera, Carlos Gonzalez, Mr. Pellot Reyes, Jose
Pieretti, Marcellus Vilcius or Manuel Sanchez ever signed cards
for 455? A. First time I learned about it was today, right now.
First time I seen the cards or even heard of them.

- Q. Did you ever warn anybody not to become a member of Local 455, any one of your employees? A. I didn't know a thing about it.
- Q. And you never said you were going to close the plant down if it became involved in 455 or that you would refuse to sign a contract with 455? A. What kind of contract?
- Q. A union contract? A. No. I never had any negotiation with them. I never spoke to the people.
- Q. Did you ever say to any of your employees in the plant that if 455 got in you would never sign a contract with them?

 A. No. I didn't know anything about it so how could I tell them that.
- Q. Do you recall or reinstate or refuse to recall or reinstate any of the employees that you laid off? A. No. Which ones are you referring to?
- Q. The ones that are the subject matter of this action whose names I read off, Escalera, Gonzalez -- A. No.
 - Q. -- et al.

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Did you ever refuse to reinstate Vilcius? A. No.

CROSS EXAMINATION

- Q. (By Mr. Appell) Mr. Accarino, there are foremen in the shop, are there not? A. What's that?
 - Q. Foremen, you have foremen? A. Yes.
 - Q. Do they give out work? A. Well, yes.
- Q. Do they direct people in their work? A. Certain places, yes.
 - Q. Do the foremen report to you? A. Do they report to me?
 - Q. Yes. A. Yes.
- Q. They tell you what's going on in the shop? A. Of course.
 - Q. If they learn of an employee gripe they'll come to you and tell you what's the problem? A. Gripe in reference to what?
 - Q. Something that the workers are complaining about, if they're unhappy? A. Well, they might on occasion.
 - Q. They have done this? A. Yes. They have done that.
 - Q. How frequently do you talk with your foremen?

 A. Whenever, you know -- might be twice a day, it may be never.

 It may not be nothing in the whole day, it may be very -- very hard to say.
 - Q. You yourself are in the working area of the shop you would say about seven hours out of the eight hour day would that be a fair statement? A. Yes.
 - Q. Sometimes the whole day, just about? A. Well, I do go up to the office. I'm not at one spot, you know.

- Q. What do you do in the shop? A. Well, basically watch.
 - Q. Walk around, see what the men are doing?
- A. Make sure things are done right, no mistakes, you know.
 - Q. When do the men take their break? A. Ten o'clock.
- Q. Where do they generally take their break in the shop itself? A. They may walk to the middle of the block and have soda, go outside, sit in their car, I don't know.
- Q. Do some of the people stay in their shop during the break?A. Some people stay in the shop.
- Q. Are you generally in the shop during the break?A. No. Usually upstairs.
- Q. Are there times when you are in the shop during the break? A. Maybe. I mean there's no set pattern.
- Q. There are times that you're in the shop during the break; is that correct? A. There would be, yes. There would be.
- Q. How about lunch, do any of the people take their lunch in the shop? A. Some of them do, yes.
- Q. And are you ever in the shop during their lunch hour?
 A. Very rarely.
 - Q. How about the foremen, where do they take their break?
- A. Wherever they please.

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- Q. Some of them take it in the shop? A. In the shop, they walk to the corner.
 - Q. Same as the men? A. Yes.
- Q. The other men? A. I really don't know. I never really paid attention.
- Q. Did you hire Mr. Vilcium personally, by the way? A. Yes, I think I did.

Q. How did you talk to him at that time, English, French?

A. Well, I had two Haitian boys working for me prior to that,
to hiring him, and they were very good workers, and I was in
Haiti myself and I kind of like -- I know the people are very
handy, they're handy people.

MR. APPELL: I move to strike, Your Honor, as not responsive.

MR. PETIT-CLAIR: Objection. You baited, let the fish bite.

JUDGE JALETTE: Motion to strike is granted. It's not responsive.

- Q. How did you speak with Mr. Vilcius when you hired him? A. I am almost sure he came -- I'm almost positive he came from an agency. In fact I think it was Active Agency that sent him down, I'm almost sure. Naturally they spoke to him and they told him he would be sent down as a helper.
 - Q. Did they indicate to you at that time that he was foreign born or spoke a foreign language? A. I knew when I seen him I knew he spoke French.
 - Q. And you did not raise any objection to the agency to hiring him? A. No, I didn't, no.
 - Q. Then he came down to the plant; is that right? A. Yes.
 - Q. And what did he say to you, what did you say to him?

 A. Well, I told you, I had these two other Haitian boys that were very good but they could speak some English.
 - Q. They interpreted for you, no? A. No.

They weren't working at that time. And I felt that I would get some more in, your know, that can speak English and I would communicate with him.

Q. What did you say to him, and what did he say to you?

JUDGE JALETTE: The question still is, how did you talk
to Mr. Vilcius when he reported --

- A. He was sent down for a job, you know.
 - Q. We know this.
- JUDGE JALETTE: That's how he got there. What happens when he gets there?

What does he do. Somebody has to talk to him?

THE WITNESS: I took him downstairs and probably showed him the work, you know, and I probably tried him out and see if he could do it.

THE WITNESS: Well, I really don't remember exactly how I got to the man, you know. I really don't remember but I got to him.

- Q. You personally showed him what to do? A. I probably did. I'm not too sure. It's been quite a while back and I don't remember every instance that happens.
- Q. Now, you hired him when, is that about November, October of '73? A. Whenever it was.
 - Q. Does that sound right?

JUDGE JALETTE: The record indicates when, Mr. Appell.

A. I really don't remember.

- Q. Now, throughout December '73, did you have any communication problems with him? A. I always did.
 - Q. You always did? A. Yes.
- Q. Through January, through February, through March, April? A. As I say I always tried to keep him on a job where he would be lost in to the job so I wouldn't have to communicate with him all day long.
- Q. And to your opinion he was performing satisfactorily through January, February, March, April, May of 1974; is that correct? A. He was -- he was producing, with some aggravation to me, he was.

- Q. What kind of aggravation and when was it?
- A. He would tell me the machine is no good, and I would have to go back to him and reshow him how to do it and how to hold the thing and then he's be all right for, let's say, three or four days.
 - Q. Did you ever threaten him -- strike that.

Did you ever tell him in January, February, March or April of this year that you might have to let him go because he was giving you some kind of problem or you didn't understand him? A. Well, I didn't -- I couldn't go into that lengthy conversation with him. I don't think he would understand me and I knew it show I wouldn't even attempt to try to, you know, to convey a whole sentence with him.

- Q. Did you ever try to tell him that? A. I wouldn't even try.
- Q. You did not? A. I wouldn't because I knew -- I tried to communicate with him --

MR. APPELL: I move to strike because and everything after, Your Honor. I'm asking a simple yes and no answer.

JUDGE JALETTE: Motion to strike is answered. Answer the question.

- Q. Did you tell him from January through April? A. No.
- Q. Did you tell him in May? A. No.
- Q. Did you give him any prior warning that he might be fired? A. I couldn't, I didn't.
 - Q. You did not? A. I couldn't.

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WILLIAM NUCHOW

was recalled as a witness, was reminded he was still under oath, was examined, and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Petit-Clair) Mr. Nuchow, you've been identified. I would direct your attention now to the period of March, April, May, June of this year.

At that time did you have members of your local employed by General Iron Corporation? A. We did.

- Q. Is that pursuant to a collective bargaining agreement?

 A. Yes, sir.
- Q. I show you now a collective bargaining agreement which has been marked in evidence Exhibit 3 for the Respondent Employer.

Is that a copy of the -- A. Yes, it is

Q. Is there a provision in that agreement that disputes between the union and management are subject to binding arbitration?

MR. APPELL: Objection. The contract speaks for itself.

JUDGE JALETTE: It's preliminary question. The objection is overruled.

You have to get the witness to the subject.

A. I think so.

- Q. I direct your attention to the following people or did you become aware in May of 1974 that Mr. Louis Escalera, Mr. Carlos Gonzalez, Mr. Maruel Sanchez Agosto, Mr. Charles Bailey, and Mr. Enrique Pellot Reyes were laid off by General Iron Corporation? A. Yes.
- Q. Were all of those gentlemen members of your union?

 A. Some yes and some no, because some were not there for the 30 day period.
- Q. I take it the union security agreement in the contract provided they must be there 30 days to become members of the union? A. That is correct.

- Q. Were you aware that any of these men had signed authorization cards for 455 with respect to representation? A. Not to my knowledge. No.
 - Q. How did you become aware that they were laid off?

 A. I think through Leroy Howard. Who was then the shop steward for Local 840.
 - Q. And what did you do as a result of that communication from Mr. Howard? A. I think I asked Leroy, I just don't remember because a lot of things have happened since then, if he had an opportunity to talk to Henry Accarino to the -- to see what the story was and see if they could not lay them off, the workers, all of them, either members or non-members, because the wage scale in the shop was not high, it's not the best contract, and I thought it would be difficult for these workers to find jobs because they were unskilled.
 - Q. And did you receive a response from Mr. Howard with respect to this?

In other words, had he informed you that he had spoken to Mr. Accarino? A. He said he would. I don't recall really a response for a period of time because I know I left the country for a few weeks. I went to Switzerland.

- Q. Did there come a time when you grieved these lay-offs?
 A. Excuse me?
 - Q. Did there come a time when you grieved these lay-offs?
 - A. Yes.

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- Q. And did there subsequently come a time where the grievance procedures had been followed so far as to go to arbitration? A. That is correct.
- Q. Were you present at that arbitration? A. At all the sessions, that is correct.

- Q. And that was pursuant to the collective bargaining agreement? A. That is correct.
- Q. Now, did there come to your attention subsequent to May of 1974 that Mr. Marcellus Vilcius and Jose Pieretti had been discharged by the General Iron Corporation? A. Yes.
- Q. How were you advised of that? A. I am really not sure, probably Leroy Howard.
- Q. Did you ever speak with either one of Accarino's,
 Mario or Henry with respect to those discharges? A. I think
 I spoke to Henry Accarino, absolutely.

JUDGE JALETTE: About both discharges?

THE WITNESS: One positively in terms of Jose Pieretti because we had a meeting in his office.

- Q. What was the substance of your conversation with Mr. Accarino at that time? A. To put him back to work, he's a working man and he went on a religious holiday because he told me he was active in the Jehovah's Witness, and we had a meeting in his conference room upstairs in his office.
 - Q. What did Mr. Accarino tell you the reason for his discharge was? A. That he can't perform the work. I said give him another chance. We had a pretty heated battle in front of Mr. Pieretti, ***
- Q. Did there come a time that you grieved that discharge?

 A. Well, I said then right at that moment with Mr. Pieretti's presence that we're going to fight like hell for him.
 - Q. Did that go to arbitration, that discharge? A. I think I came to the Board.

JUDGE JALETTE: You were asked whether or not you went to arbitration, not whether you came to the Board?

A. I don't recall. I know I went to some agency at the time. I can't really answer.

- Q. Did you have any discussions with either of the Accarino's with respect to the discharge of Marcellus Vilcius?

 A. I think I called Henry on the discharge of the gentleman you just mentioned.
- Q. Did he give you a reason at that time why he discharged him? A. I don't recall.
- Q. Did you grieve that discharge? A. I said I was taking that to arbitration.
- Q. Did you take to arbitration all of the lay-offs and the discharges at the same time? A. Originally I think I first submitted for the A. A. A. on a number of the employees. Then I submitted a different letter to request an additional on the question of Mr. Pieretti and Mr. -- the gentleman you just mentioned before.
 - Q. This was all done pursuant to the collective bargaining agreement? A. That is correct.
 - Q. Which is in evidence.

Did you notify the employees? A. Everyone, at the last address we had on record, absolutely.

MR. PETIT-CLAIR: Your Honor, at this time I would ask that it be marked, I think it's 12 for identification.

(The above referred document was marked Respondent Employer's Exhibit No. 12 for identification, as of this date.)

Q. (By Mr. Petit-Clair) I show you now an exhibit which has been marked 12 for identification.

Do you know what that is?

(Handing document to witness.)

JUDGE JALETTE: Tell us what it is briefly.

A. Yes.

- 610 It's a letter to Mr. Vilcius requesting that he appear before the American Arbitration Association for a hearing on his behalf.
 - Q. Did he so appear? A. Not the first time.
 - Q. Was it adjourned to another date? A. That is correct. I refused to go on with the arbitration unless we had some of the borthers who were fired or laid off to be there.
 - Q. And did he show up a second time? A. Yes, he did.
 - Q. Can you tell me how he got there? A. He came to my union office at 345 West 44th Street, and my secretary called me and said Mr. Vilcius is here and I said we're waiting for him, please give him three dollars for a cab fare to get up here so we could defend him, which he did give him three dollars, he was there in ten, twelve minutes.
- Q. Were any of the other workers present at the arbitration?

 A. I don't recall seeing any other worker there.
 - Q. Do you recall if at that arbitration an offer was made to Mr. Vilcius for reinstatement? A. Absolutely.
 - Q. And how was that offer communicated to him?A. In English.
- JUDGE JALETTE: What's that, in English?
 THE WITNESS: Right.
 - Q. And did he understand? A. Well, he did say he's been going to night school because -- in order to learn, to make a better living and to stay in the country, it was best to his interests to go to school at night. And I understood him and he understood me. And he also understood the arbitrator, Mr. Wildbush.

Q. (By Mr. Petit-Clair) Did Mr. Accarino advise you that he would reinstate Mr. Vilcius? A. Yes.

He said tell him to report back Monday morning to work.

- Q. To your knowledge, did Mr. Vilcius report back?
 A. No.
- Q. (By Judge Jalette) What did he say? A. Fine, I will meet you there between 8:00 and 8:30.
 - Q. I have difficulty how he could have told you that. I'm not sure that Mr. Vilcius could say those exact words or anything like it. A. All I could tell you, sir, very loud and clear that he understood everything I said. He also understood he would meet me there Monday morning to go to Mr. Accarino's office to make sure that he goes back on the job, that he understood me quite loud and clear.
- Q. (By Mr. Petit-Clair) At any time during your dealings with the Accarino's with respect to these men did you discuss with Mr. Accarino Local 455? A. I don't think so, no, sir.
 - Q. Did he ever mention to you that he had discharged or laid off any of these employees because of their activities on behalf of 455? A. He mentioned to me that he laid them off and fired a few but not because of activities on behalf of 455.

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CROSS EXAMINATION

Q. (By Mr. Appell) Mr. Nuchow, it would be fair to state that there was no evidence presented as to Mr. Vilcius at the

arbitration concerning whether he was probably discharged?

A. Well, the company attorney stated the case for the company at the time.

- Q. Well, was there any evidence taken on Mr. Vilcius?

 A. The arbitrator took notes and heard the testimony of

 Horowitz, who is the company attorney at the hearing.
- Q. Did Mr. Vilcius testify? A. He was there. He was asked questions by the Arbitrator.
- Q. He was asked? A. He was asked some questions, right, absolutely.
- Q. Was there any provision for back pay made for Mr. Vilcius from the time that he allegedly -- from the time he was discharged until the day of the arbitration? A. I think that as part of the agreement when Mr. Wildbush who was the arbitrator made a recommendation to take his job back, there would be no back pay provision on the arbitration award. Then he asked me if I would accept it. I repeated it to Mr. Vilcius and then we called Mr. Accarino.
- Q. You say Mr. Vilcius got back pay? A. He did not get back pay. It was not part of the award. It was part of the discussion with him.
 - Q. So he got none? A. That is correct.
 - Q. Okay.

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What day was the arbitration hearing held? A. I don't remember. I really don't.

Q. (By Mr. Appell) Mr. Nuchow, did anyone specifically contend that any of these men were laid off or discharged because they joined or assisted Local 455? A. I think there was some mention to that fact.

- Q. Who mentioned it? A. I think I did.
- Q. Not 840, 455? A. 455.
- Q. (By Mr. Appell) Do you have any knowledge that anyone received notice of this arbitration besides Mr. Vilcius?

 A. I don't recall. I think we -- I think I instructed my secretary to send out notices of the arbitration award.
 - Q. Do you have any proof of receipt for any of those men? A. I don't know.
 - Q. Is there any testimony as to the activity of these men for Local 455 at the hearing? A. The only one present at the hearing was Mr. Vilcius.
 - Q. Did anyone ask him questions about his signing a card for Local 455? A. I think probably Mr. Wildbush raised some questions.
- 621 Q. You say probably. Did he? A. I don't recall, counsel. I don't recall.
 - Q. Okay. A. I really don't recall.
 - Q. Did anyone from your union contact Local 455 to ask for assistance in proving this case at arbitration? A. No.

JUDGE JALETTE: You are aware that Mr. Schifano was a representative of Local 455, do you not?

THE WITNESS: No. I do not know the gentleman at all.

- Q. Have you ever seen him before this hearing? A. I saw him yesterday.
 - Q. Have you ever seen him before the hearing? A. I don't believe I ever met the gentleman before.
 - Q. Do you recall seeing him with some employees at the shop? A. Never saw him in my life before except yesterday.

- Q. Do you know Mr. Colavito? A. Oh, yes.
- Q. You didn't inquire with him as to the facts in this case; did you? A. No.

We're not talking to each other in this period of our lives.

- Q. When did you first become aware that the people involved in this case and possibly in your arbitration were active for Local 455 or that someone on their behalf was raising that point, that they were -- A. I don't know exactly when. I think Leroy Howard mentioned to me something about the lay-off.
 - Q. Do you remember when you first learned --
- A. I really don't know.
 - Q. Was it before the arbitration? A. I don't recall.
 - Q. Was it while Mr. Pieretti was still employed, in June -- A. I don't remember.
 - Q. Did you testify at the arbitration? A. Did I testify, I made comments.
 - Q. Did you give evidence, testimony? A. I don't recall.
 - Q. Do you remember seeking to prove or asserting that the six men who were laid off had signed cards for Local 455?

 A. I didn't know they signed any cards for Local 455.
 - Q. Did you make any assertion at this hearing that Mr. Pieretti had signed a card for Local 455? A. I don't think I said he signed a card. I think he was active on behalf of 455.
 - Q. You said that? A. I think so, yes, I did.
 - Q. Did you seek to show in any way how this was true?

Did you provide any witnesses or evidence? A. Not witnesses. Just the conversation Mr. Pieretti had with me personally and as a gentleman too.

- Q. Did anyone else speak up or testify on the Local 840 case at that hearing besides yourself? A. Just myself and the people I mentioned.
 - Q. Did you make any attempt to summon witnesses?

 A. Oh, yes.
 - Q. Other than these men who were laid off? A. No.
- 626 Q. (By Judge Jalette) Was there an interpretor there for Mr. Vilcius at the arbitration hearing? A. Not to my recollection -- I don't think so.
 - Q. Could the arbitrator speak French? A. I don't know his linguist --
 - Q. He didn't speak with Mr. Vilcius in French in your presence? A. I don't recall.

JUDGE JALETTE: Any problem with these?

I would propose a stipulation -- I would propose a stipulation that letters identical to that which is Respondent's Exhibit 12 were sent to Carlos Gonzalez, Enrigue Pellot, Luis Escalera, and Charles Bailey, and all four were returned to the sender unclaimed.

Will you so stipulate?

MR. APPELL: May I open these envelopes just to see what's in them, Your Honor?

JUDGE JALETTE: Absolutely.

MR. APPELL: May I note --

JUDGE JALETTE: I don't think it makes any difference since they're unclaimed.

MR. APPELL: May I note that Escalera is improperly spelled as Ezaclova, E-Z-A-C-L-O-V-A. And I will stipulate

that these were all postmarked September 24, 1974, and that Gonzalez's envelope indicates addressee unknown, the Ezaclova indicates the same, the Bailey letter indicates unclaimed, and the Pellot indicates moved, left no address.

Without conceding relevancy I will stipulate that those are the facts.

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HENRY ACCARION

was recalled to the stand, was reminded he was still under oath, was examined and testified as follows:

CROSS EXAMINATION (cont'd)

- Q. (By Mr. Appell) By the way, you recall a petition for an election was filed by Local 455 in early June? A. Yes.
- Q. Would it be fair to state that you received that on June 5th, 1974? A. I really don't know. I really don't know when we got it.
- Q. Mr. Accarino, you were testifying as to some mistakes that Mr. Vilcius made.
- Did he ever make such mistakes before June 5th, the date of his discharge. A. He might have made some minor mistakes that I overlooked, you know. Nothing big.
 - Q. When you say -- they were mistakes that you knew about? A. Minor, minor mistakes. That happens all day long. I mean everybody is not perfect. People make mistakes and I allow for it.
 - Q. Did you find his English was worse in June '74 than it was in the previous months? A. Well, it probably was getting a little better, but not to any extent.

Q. And did he in fact cause any damage to anybody or anything?A. No, he didn't.

JUDGE JALETTE: All right.

- Q. Now, you stated you agree with the testimony of Mario Accarino as to why the lay-offs were; is that correct?

 A. Yes.
- Q. And you say the lay-offs were strictly by seniority; is that correct? A. Yes.
- Q. Were you aware there was an employee named Frank Jesus, J-E-S-U-S, who was hired May 13th, which would be after some of the men who were laid off?

MR. PETIT-CLAIR: I object to that.

A. Jesus?

Q. Frank Jesus hired May 13th as a helper? A. I really -- I don't really know the man.

JUDGE JALETTE: You're not aware of that fact?

THE WITNESS: I'm not aware of it. I don't even know the name.

JUDGE JALETTE: That's your answer?

- Q. Did you check the records carefully to make sure it was by seniority? A. I did leave it up to the bookkeeper truthfully.
- Q. Well, there are dates on those letters. Is it your testimony that you did not dictate those dates, return to work June 3rd? A. Probably -- I probably picked the date, I probably told them let them come back Monday, and that was probably was June 6. I don't remember exactly how it was composed.
 - Q. Can you explain why those letters were sent out when they were? A. Why?

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- Q. Yes. A. The reason?
- Q. Yes. A. Because I need more help.
- Q. In other words, within five days you had changed your mind that you needed these people, is that what you're saying? A. Things happen in business, like I might have been waiting for steel at the time, there might have been a steel strike. Steel might have come in and I had steel for the people to work with. That's not peculiar.

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- Q. Did you ever tell Mr. Pieretti you might fire him before the day he actually was fired? A. Mr. who?
 - Q. Pieretti. A. Mr. Pieretti?
 - Q. Yes. A. No.
- Q. Do you have any production records that would substantiate your statement that he produced 10 or 12 items on that particular day, instead of 60 or 70? A. No.
 - Q. Do you have any production records that show that 60 or 70 is the normal amount? A. Oh, I know it for a fact. We're running the job for about three or four years and I know exactly --
 - Q. I'm asking if you have any records? A. I don't have any written records, no, but I know it's a positive fact.
 - Q. Do your foremen write up written production reports on people? A. No.
 - Q. Did any of your foremen complain to you that Mr. Pieretti was not performing up to par at any time? A. Well, yes. I mean, I've gotten it from Miquel Ortiz that he was making pieces wrong.
 - Q. Is he a foreman? A. No, he's not a foreman.
 - Q. Did any of your foremen ever complain to you about Mr. Pieretti? A. Well, they might have at one time or another on different occasions.

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- Q. Do you recall any such time now? A. Well, I don't really recall a specific incident, you know.
 - Q. Okay.
- 637 How did you know that the pieces of material that you confronted Mr. Pieretti with, how did you know that was his work? A. Because they were laying right by his machine.
 - Q. Was it in a pile? A. I was keeping track of it myself personally.
 - Q. You were keeping track personally? A. Yes.
 - Q. Is that your normal thing to stand and keep track of everything he did? A. Right, exactly. That's my job.
 - Q. Before the time you called Mr. Pieretti to your office and asked him about what's wrong and so forth, had you ever called him to your office before that? A. No.
 - Q. Do you normally call employees to your office to talk to them? A. On occasion.
 - Q. How often would you say that's occurred? A. I might speak to somebody, you know, in private but I don't want to -- I don't want them to feel embarrassed let's say. I'll do it on occasion. There's no set time or amount of times I do it.
 - Q. All right.
- Mr. Pieretti did not have a bad absentee record as a whole, did he, no.
 - Q. He was generally punctual and he came to work every day basically? A. That's one of the reasons I tolerated a lot of these mistakes.
 - Q. Have you had other people who were absent more often?

 A. Oh, sure.
 - Q. And they were not -- were they fired also? A. Some of them were, some of them weren't.

- Q. You've had people with worse absentee records who have not been fired; is that correct? A. I might have. I might have. I couldn't say.
- Q. Now, after you had this difficulty with Mr. Pieretti on these machines, he went back to work at his old machine, didn't he? A. No. I gave him another job, a different job.
 - Q. What was the job? A. A simpler job.
 - Q. Did he do that all right? A. No.

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Q. What was that? What kind of a job? A I think I testified to that. He was putting two horizontal wires and three vertical wires, just overlapping them, and this Migual Ortiz.

who was assembling the major components told me that his parts were always crooked and they were always overlapping and he couldn't put them back together, to go over and see what's doing, let him do it right.

- Q. Was there ever a time after that that he went back to his old machines that he had been working on for months? A. Not after that, no.
- Q. Was he making -- did he make mistakes in his last week of work? A. Yes. Yes.
- Q. And what was he working on his last week of work?A. Two vertical wires, three horizontal wires.
- Q. And this was not on the machine that he had been working on all along? A. No. It was a different machine. A simpler job.
- Q. What made you move Mr. Pieretti to these new jobs to begin with? A. Because he just couldn't seem to make them slack racks properly. He just couldn't do it. That's all.
- Q. I'm saying before that he worked on his old machine; didn't he?

What made you move him to -- A. What old machine?

- Q. Was he not working on another machine before he did that slack hanger job? A. Oh, yes, sure. I might have had him on spot welding -- we have maybe 1,000 items.
 - Q. What made you move him to that slack hanger job?

 A. Because his job finished, terminated, probably was no more to do so I put him on the next job where I had some work. I have to switch men. I don't have to do same thing every day.
 - Q. Do you consult with anyone before you discharged Pieretti? A. Yes, I would. I did consult with --
 - Q. Mario? A. Probably tell him the story.
 - Q. Same with Vilcius, talk with Mario? A. I probably -- I would tell him the story definitely. I mean -- at night, when I sit down and talk with him, tell him what took place. And just to get it out of my system let's say.
 - Q. Did you men normally sit down after the day and talk about affairs of the shop? A. Well, you know, we do when we wash up, you know.
 - Q. Did you ever discuss unions? A. We have bigger problems than unions to discuss.
 - Q. Well, did you ever discuss Local 455 with Mario Accarino? A. Not to any extent.
- Q. Well, when was the first time that you did?

 A. Naturally when we got the -- that telegram, you know. We just said where did these people come from. We were surprised, we were stunned, surprised. We didn't know them from Adam.
 - Q. What did you say to him, and what did he say to you?

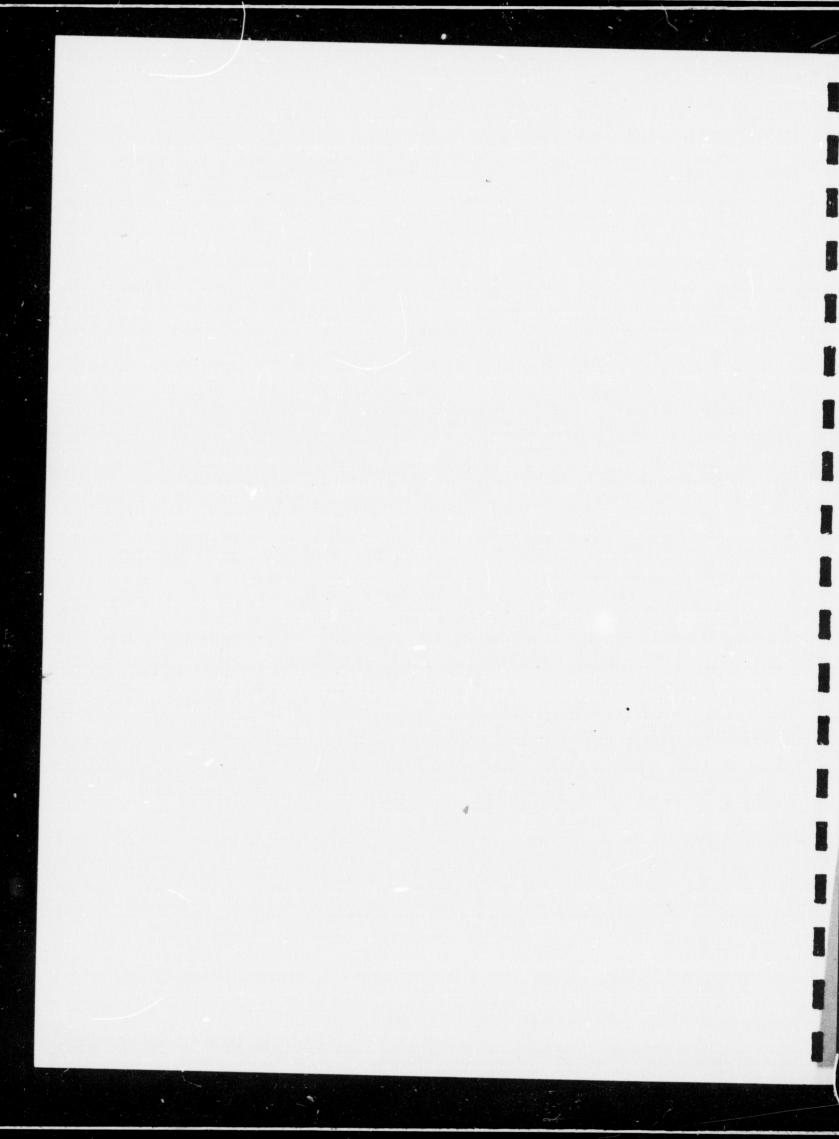
 A. Who are these people, where did they come from, what is this.

 And then we called up our attorney, and sent it to our attorney and told him -- I mean we know nothing about union activities -- I mean -- we're manufacturers.

- Q. Did you ever try to find out who was behind this thing? A. Why should I?
 - Q. Well, did you? A. No, I didn't.
- Q. Did your foremen ever tell you who they thought were supporting the union? A. They didn't tell me.
- Q. Did you talk to your foremen about the unions?

 A. I told you I found out about these cards today -- I seen these cards today or the people that signed them.
- Q. Did you ever talk to your foremen about the union?A. I never talked to the foremen, no. Nothing to discuss.
- Q. Did you ever hear any rumors about the union that came to your attention? A. Only time I heard about them was when that gentleman come up to the office.
 - Q. Which one? A. That gentleman right there.
 - Q. Mr. Schifano? A. Yes.
 - Q. When was that? A. About four or five weeks ago. He said he would return, and he never returned.
 - Q. Did you have any desire to find out who was supporting Local 455? A. No.
 - Q. It didn't matter to you at all? A. Why should it matter?
 - Q. I'm asking you. A. No, it didn't matter.
 - Q. Did you prefer that Local 840 stay in the plant?

 A. Well, let's say I know -- I know we must have a union.



United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS	BOARD,) Petitioner,)	
v.)	No. 75-4256 - 4242
GENERAL IRON CORP.,	Respondent.)	
)	

CERTIFICATE OF SERVICE

	I hereby certify	that I have	served by	hand (by	mail) two cop	nies of the
	APPENDIX			in the	above-entitled	case, on
the fe	following counsel	of record,	this 20th	day of _	January,	1976.

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Subscribed and Sworn to before me this